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6 GERALD ARMSTRONG CORPORATION

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

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JAN 13 1995

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
11 a California not-for-profit)
religious corporation,)
12)
Plaintiff,)
13)
vs.)
14)
GERALD ARMSTRONG; MICHAEL WALTON;)
15 THE GERALD ARMSTRONG CORPORATION)
a California for-profit)
16 corporation; DOES 1 through 100,)
inclusive,)
17)
Defendants.)

No. 157 680

HUB LAW OFFICES

**ARMSTRONG'S REQUEST FOR
JUDICIAL NOTICE IN
OPPOSITION TO MOTION FOR
SUMMARY ADJUDICATION OF
FOURTH, SIXTH AND ELEVENTH
CAUSES OF ACTION**

Date: 1/27/95
Time: 9:00 a.m.
Dept: One
Trial Date: May 18, 1995

19 Defendant Gerald Armstrong hereby requests that the Court
20 take judicial notice of the following records of the Superior
21 Court of the State of California, Court of Appeal of the State of
22 California, United States District Court, Central District of
23 California pursuant to Evidence Code sections 452 and 453.

24 Exhibit A Notice of Motion and Motion to Exclude Testimony of
25 Plaintiffs' Designated Expert Witness Margaret
26 Singer filed on or about July 29, 1991 in Aznaran
27 v. Church of Scientology of California, U.S.
28

1 District Court, Central District of California, CV-
2 881786 JMI(Ex).

3

4 Exhibit B Plaintiff's Opposition to Motion to Exclude Expert
5 Testimony filed on or about August 26, 1991 in
6 Aznaran v. Church of Scientology of California,
7 U.S. District Court, Central District of
8 California, CV-881786 JMI(Ex).

9

10 Exhibit C Declaration of Ford Greene Opposing Motion to
11 Exclude Expert Testimony, Exhibit (F) thereto,
12 Declaration of Gerald Armstrong in Opposition to
13 Motion to Exclude Expert Testimony in Aznaran v.
14 Church of Scientology of California, U.S. District
15 Court, Central District of California, CV-881786
16 JMI(Ex).

17

18 Exhibit D Order Ruling on All Remaining Pending Motions,
19 signed by US District Judge James M. Ideman and
20 filed on June 23, 1992, in Aznaran v. Church of
21 Scientology of California, U.S. District Court,
22 Central District of California, CV-881786 JMI(Ex).

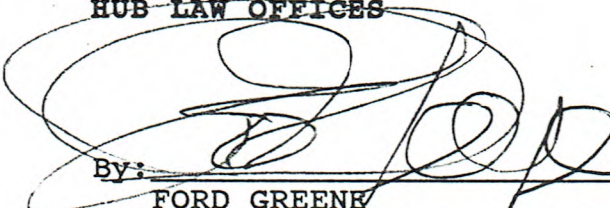
23

24 Exhibit E Request of CNN to Conduct Film and Electronic Media
25 Coverage and Order filed March 20, 1992 in
26 Scientology v. Armstrong, Marin Superior Court No.
27 152229 and Order that Filming is allowed, by Judge
28 Michael B. Dufficy filed March 20, 1992

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Exhibit F Defendants' And Counterclaimants' Opposition To
Plaintiffs' and Counterdefendants' Motion for
Protective Order Re Fifth Request For Production of
Documents or Things and For Sanctions filed May 27,
1992, in Religious Technology Center v. Scott,
United States District Court, Central District of
California, CV 85-711 JMI (Bx); CV 85-7197 JMI (Bx)

DATED: January 13, 1995

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20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 VICKI J. AZNARAN and
RICHARD N. AZNARAN,

23 Plaintiffs,

24 v.

25 CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

26 Defendants.

27 AND RELATED COUNTERCLAIM

) CASE No. CV 88-1786 JMI(Ex)

)
) NOTICE OF MOTION AND MOTION TO
) EXCLUDE TESTIMONY OF PLAINTIFFS'
) DESIGNATED EXPERT MARGARET
) SINGER

28) DATE: August 19, 1991
) TIME: 10:00 a.m.
) COURTROOM: Hon. James M. Ideman

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JUL 29 1991

HUB LAW OFFICES

7/29/91

1 TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on August 19, 1991, defendants
3 Religious Technology Center, Church of Spiritual Technology,
4 Church of Scientology International, and Author Services Inc.
5 will and hereby do move the above-entitled Court, located at 312
6 N. Spring Street, Los Angeles, California 90012, for an order
7 excluding all testimony of plaintiffs' designated expert
8 Margaret Singer pursuant to Rule 403 of the Federal Rules of
9 Evidence. Pursuant to standing order in this case, the matter
10 will be submitted to the Court without oral argument.

11 This motion is brought on the ground that plaintiffs'
12 designated expert witness, forensic psychologist Dr. Margaret
13 Singer, is proffered by plaintiffs to testify on the subject of
14 coercive persuasion. Dr. Singer's thesis on this subject has
15 been rejected by the American Psychological Association because
16 it lacks scientific basis. It has also been rejected by
17 numerous courts, including the United States District Courts for
18 the Northern District of California and the District of
19 Columbia, and the Court of Appeals for the District of Columbia
20 on the grounds that it is not generally accepted in the
21 scientific community and not sufficiently established to be
22 accepted as evidence in a federal court. The Motion is further
23 brought on the following additional grounds: 1) Singer's theory
24 would require the trier of fact to evaluate religious beliefs
25 and practices, which is prohibited by the First Amendment; 2)
26 Singer has exhibited such strong bias against the Church of
27 Scientology and other newer religions that she is not qualified
28 to testify as an expert; and 3) Singer's proffered testimony

1 lacks probative value and fuels prejudices against defendants
2 warranting exclusion under Rule 403 of the Federal Rules of
3 Evidence.

4 In support of this motion, defendants reply upon this
5 Notice of Motion and Motion, the accompanying Memorandum of
6 Points and Authorities, the pleadings and records on file
7 herein, and upon such other and further evidence as may properly
8 come before the Court.

9 Dated: July 29, 1991

Respectfully submitted,

10 | 5 |

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21 CENTRAL DISTRICT OF CALIFORNIA

22 VICKI J. AZNARAN and
RICHARD N. AZNARAN,
23 Plaintiffs,
24 v.
25 CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

26 Defendants.

27 AND RELATED COUNTERCLAIMS.)
28

) CASE No. CV 88-1786 JMI(Ex)
)
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION TO EXCLUDE TESTIMONY
) OF PLAINTIFFS' DESIGNATED
) EXPERT MARGARET SINGER

) DATE: August 19, 1991
) TIME: 10:00 a.m.
) COURTROOM: Hon. James M. Ideman

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1	Robbins & Anthony, <u>Brainwashing and the Persecution of Cults</u> , 19 J. of Religion and Health 66 (1980)	22
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INTRODUCTION

1
2 Plaintiffs Vicki and Richard Aznaran have designated a
3 forensic psychologist, Dr. Margaret Singer ("Singer"), as
4 their sole expert witness in this action, to opine on the
5 subject of "coercive persuasion." In so doing, they proffer an
6 expert to testify concerning a thesis of hers that has provoked
7 the following reactions:

8 -- Outright rejection of the thesis by the American
9 Psychological Association ("APA") because it "lacks
10 the scientific rigor and evenhanded critical approach
11 necessary for APA imprimatur...." (Letter to Singer,
12 dated May 11, 1987, from Board of Social and Ethical
13 Responsibility for Psychology of the APA, annexed as
14 Exhibit K);

15 -- Exclusion of Singer's testimony regarding her
16 thesis as she would apply it to the Church of
17 Scientology because "her views on thought reform ...
18 are not generally accepted within the scientific
19 community." United States v. Fishman, 743 F.Supp.
20 713, 723 (N.D.Cal. 1990);

21 -- Exclusion of Singer's testimony on this subject
22 because the court agreed with the Fishman analysis
23 that her testimony is "'not sufficiently established
24 to be admitted as evidence in federal courts of
25 law.'" Greene v. Maharishi Mahesh Yogi, Nos.
26 87-0015, 87-0016 (D.D.C. Mar. 12, 1991) (annexed as
27 Exhibit A), Slip. Op. at p. 14, quoting United
28 States v. Fishman, supra, at 719, and

1 -- A judgment reversed and remanded because plaintiff
2 "has failed to provide any evidence that Dr.
3 Singer's particular theory ... has a significant
4 following in the scientific community, let alone
5 general acceptance." Kropinski v. World Plan
6 Executive Council - U.S., 853 F.2d 948, 957 (D.C.
7 Cir. 1988) (emphasis in original).

8 -- Consequently, the Church of Scientology defendants ("the
9 Church") move to exclude Singer's testimony because her thesis
10 has been resoundingly rejected both by the relevant scientific
11 and professional communities and by federal courts from coast
12 to coast. Moreover, Singer's Theory is repugnant to the First
13 Amendment as the theory requires a trier of fact to evaluate
14 religious beliefs and practices. Further, Singer has evidenced
15 such a profound bias against the Church of Scientology and
16 other, newer religions, that she is unqualified to testify with
17 the imprimatur of an expert. Finally, Singer's proffered
18 testimony lacks probative value and fuels prejudices against the
19 Church warranting exclusion under Rule 403 of the Federal Rules
20 of Evidence^{1/}

21 STATEMENT OF FACTS

22 1. Singer's Theory

23 Singer's testimony hinges on her opinion that the Church of
24 Scientology "unduly influenced [the Aznarans] by psychologically
25 dominating them, by stripping them of their ability to reason
26 and impairing their capacity to exercise an informed consent, by

27 1. The Church is not moving to exclude the testimony of Richard
28 Ofshe, given plaintiffs' counsel's representation that he would
not be offered as an expert.

1 usurping the independence of their will and conscience."
2 Plaintiffs' First Further Responses to Defendants' Third Set of
3 Interrogatories at 17 (Oct. 15, 1990) ("Expert Interrogatory
4 Responses") (attached as Exhibit B). Singer maintains that the
5 Church can exert such influence because it engages in the
6 "systematic manipulation of social and psychological influences"
7 ("SMSPI"),^{2/} a term coined by Singer that encompasses
8 brainwashing, thought reform and coercive persuasion. Singer
9 Trial Testimony at 2084 (Mar. 11, 1986), in Wollersheim v.
10 Church of Scientology of California, No. C 332 027 (Super.Ct.
11 L.A.Cty.) at 2084 ("Wollersheim Test") (attached as Exhibit
12 c).^{3/}

13 According to Singer, the techniques used by what she
14 characterizes as current influence programs "are more powerful
15 . . . and often these programs attempt to induce conformity more
16 rapidly" than those allegedly used in the prisons of China and

17 ///

18 2. As defined by Singer, a system of thought reform consists
19 of six essential elements: (1) substantial control over
20 an individual's thought content and time, and in particular of
21 the person's social and physical environment; (2) systematic
22 creation of a sense of powerlessness in the person; (3)
23 manipulation of a system of rewards, punishment, and experiences
24 so as to promote learning of a particular belief or ideology;
25 (4) manipulation of a system of rewards, punishments, and
26 experiences to inhibit behavior that reflects beliefs held prior
27 to joining the organization; (5) a closed system of logic and
28 authoritarian structure that precludes criticism and reform of
the organization; and (6) maintenance of an uninformed state in
the subject. Singer and Ofshe, Thought Reform Programs and
The Production of Psychiatric Casualties, 20 Psychiatric
Annals 188, 189-90 (Apr. 1990) ("Thought Reform Programs").

3. Because Singer sees these three terms as essentially
synonymous, they shall be used interchangeably in this
memorandum. See, e.g. Wollersheim Test at 2627, 2084
(Ex. C).

1 Korea,^{4/} Thought Reform Programs, 20 Psychiatric Annals
2 at 189, sometimes being so effective as to cause individuals to
3 lose their will or control after only two days. See
4 Deposition of Margaret Singer at 190-91, (Oct. 10, 1989), in
5 Gorman v. Lifespring Inc., No. 87-2572 (D.D.C.) ("Gorman
6 Dep.") (Ex. F); see also Wollersheim Test at 2629 (Ex.
7 C).

8 Singer brings a wide array of organizations within the
9 sweep of those she dubs as the second generation of "interest
10 influence and control programs." Singer contends that mainstream
11 organizations such as the Fortune 500 company of Snap-On-Tools,
12 as well as so-called "cults," large awareness groups and
13 certain therapeutic communities, engage in thought reform.
14 Declaration of Margaret Singer at para. 6 (June 24, 1988);
15 Lowder v. Snap-On Tools Corp., No. 615-484 (Cal.Super.Ct.
16 Santa Clara Cty.) (attached as Exhibit G); Thought Reform
17 Programs, 20 Psychiatric Annals at 189. But she sweeps
18 selectively, as well as broadly, when characterizing groups as
19 engaging in thought reform.

20 Thus, she arbitrarily characterizes the Church of

21 4. Singer contends that her theory of SMSPI derives from
22 studies of alleged thought reform of prisoners in China and
23 Korea, as well as intellectuals in China in the 1950s, see
24 generally R. Lifton, Thought Reform and the Psychology of
25 Totalism (1961) ("Thought Reform"); Schein, Coercive
26 Persuasion (1961); see also Declaration of Margaret T.
27 Singer in support of Plaintiffs' Motion in Limine Re: Thought
28 Reform, submitted in Miller v. Lifespring, No. 867-859 (Cal.
Super.Ct. March 1989) ("Miller Decl.") (attached as Ex.
D), although Singer's theory, unlike Lifton & Schein's models,
does not require physical force or constraint or the threat of
these sanctions. Singer Trial Testimony at 2879-82 (Mar. 25,
1985), in Christofferson v. Church of Scientology of
Portland, No. A7704 05184 (Oregon Circuit Ct. Multnomah
Cty.) ("Christofferson Test") (attached as Exhibit E).

1 Scientology (but not the Catholic Church) as engaging in
2 coercive persuasion because, in her opinion, it supposedly
3 isolates disciples, controls their environment, places demands
4 that limit sleep, subjects them to peer pressure and positive
5 and negative reinforcement, prohibits dissent and sometimes
6 induces fear, guilt, and emotional dependency. Expert
7 Interrogatory Responses at 17 (Ex. B). Compare with
8 Declaration of Dr. Frank K. Flinn, dated May 30, 1991, paras.
9 18, 24, 26-31, 33 ("Flinn Decl.") (attached as Exhibit H)
10 (discussing demands on nuns and monks). Because Singer's thesis
11 rests upon unsubstantiated assertions, it is not surprising that
12 she has never subjected her claims to empirical tests. It is
13 for that and other reasons that her theories are disavowed and
14 disapproved by the relevant communities.

15 2. Rejection of Singer's Methodology & Theory

16 By the Professional Community

17 Singer's "studies" from which she concludes that particular
18 organizations are coercive rest only on her reading of materials
19 by and about the organization and conversations with a limited
20 number of former members, see, e.g., Wollersheim Test at
21 2266-70 (Ex. C); Christofferson Test. at 2688, 2773-75 (Ex.
22 E),^{5/} and her conclusions that the institution at issue
23 caused an individual "psychological" harm derived most often
24 solely from an interview with the hostile former member.
25 Gorman Dep. at 103 (Ex. F). In neither instance does Singer

26 5. Thus, for example, Singer concluded in August, 1977 that the
27 Church of Scientology engages in thought reform solely on the
28 basis of reading several Church publications and speaking with
six or seven former members. Christofferson Test at 2779.
(Ex. E).

1 look to a control or comparison group to guide or support her
2 purported findings, nor regularly verify statements by the
3 individual's reference to objective reports or sources. Singer
4 has not published any systematic factual analysis or empirical
5 studies to support her assertions. (See Declaration of Perry
6 London, Section V, for a full discussion of the lack of
7 scientific testing and validity of Singer's theories, Exhibit
8 R.)

9 Singer's work not only lacks acceptance, but has been
10 resoundingly rejected by her peers. In 1987, Singer chaired the
11 Task Force on Deceptive and Indirect Methods of Persuasion and
12 Control ("the Task Force") of the American Psychological
13 Association ("APA"), which issued a report (the "Task Force
14 Report") addressing "psychological influence techniques and
15 their consequences, as exemplified in cults and large-group
16 awareness trainings." See Task Force Report at 11 (attached as
17 Exhibit I). The Task Force Report, which Singer drafted,
18 discussed what it disapprovingly calls "cults," Deposition of
19 Margaret Singer at 217-18 (July 22, 1987) in Slee v. Werner
20 Erhard, No. N-84-497-JAC (D.C. Conn.) ("Slee Dep.")
21 (attached as Ex. J), and concluded that many new members to
22 such groups were especially accessible to the recruitment and
23 persuasion techniques of the groups in question and that a
24 "significant percentage" of those individuals are "clearly
25 harmed." Task Force Report at 27 (Ex. I.) The Report by its
26 own statement presented these conclusions without any "reliable
27 data . . . which would permit a comparison of the frequency of
28 physical or psychological harm in religious cults and in

1 mainstream society." Id. at 17. In fact, the Report conceded
2 that in the absence of reliable data "conclusions must be based
3 on anecdotal reports and investigations of groups which have
4 caught researchers' attention for one reason or another." Id.
5 In this instance, this "data" was nothing more than "knowledge"
6 Singer gleaned from individuals already hostile to the
7 organization in question and in most instances engaged in
8 litigation with the group being castigated, as well as isolated
9 anecdotes reported in literature. Slee Dep. at 217-18 (Ex.
10 J).

11 The Board of Social and Ethical Responsibility for
12 Psychology ("BSERP") of the APA reviewed and rejected the Task
13 Force Report:

14 BSERP . . . is unable to accept the report of
15 the Task Force. In general, the report lacks
16 the scientific rigor and evenhanded critical
17 approach necessary for APA imprimatur. . . .

18 The Board cautions the Task Force members
19 against using their past appointment to imply
20 BSERP or APA support and approval of the
21 positions advocated in the report.

22 BSERP letter to M. Singer dated May 11, 1987 (attached as
23 Exhibit K).^{6/} Based upon a similar analysis of the
24 methodological deficiencies and lack of scientific procedures

25 6. Singer has attempted to downplay the rejection by asserting
26 that the Board reviewed only a draft. See Slee Dep. at
27 366-69 (Ex. J). She, however, characterizes the report as
28 "accurate," Slee Dep. at 369, and the work that remained as
only a task of incorporating and criticizing additional studies.
Slee Dep. at 368. She does not indicate that the methodology
or approach was to change in any way.

1 underpinning Singer's theory and "studies," Dr. Perry London,
2 Dean of the Graduate School of Applied and Professional
3 Psychology at Rutgers University, concluded that Singer's
4 "theory of social influence which argues the existence of
5 irresistible social influence processes and/or irreversible
6 social influence process and/or subversion of will as a result
7 of these social influence processes, is not a viable argument
8 from the viewpoint of contemporary scientific psychology."

9 (London Declaration, para. 41, Ex. R.)

10 In Molko v. Holy Spirit Ass'n, 46 Cal.3d 1092, 252
11 Cal.Rptr. 122 (1988), cert. denied, 490 U.S. 1084 (1989),
12 members of the psychological, academic and religious
13 communities filed amicus briefs urging affirmance of the
14 district court's exclusion of Singer's proffered testimony on
15 thought reform.^{7/} Twenty-three individuals, including
16 psychologists, as well as professors of sociology and religion,
17 submitted a brief before the California Supreme Court in which
18 they argued principally that Singer's conclusions were not
19 scientific in any meaningful sense and that her methodologies
20 "depart so far from methods generally accepted in the relevant
21 professional communities that they are incapable of producing
22 reliable or valid results." Brief of Amicus Curiae Eileen Barker
23 et al. at 8 (attached as Exhibit L).^{8/} A similar brief

24 7. The arguments set forth in these amicus briefs were not
25 addressed by either court to which they were presented. The
26 California Supreme Court explicitly declined to do so because
27 these arguments were not raised below. Molko v. Holy Spirit
28 Ass'n, 46 Cal.3d 1092, 1111 n.13, 252 Cal.Rptr. 122, 132,
n.13 (1988). The United States Supreme Court, given that it
denied certiorari, obviously did not address the arguments.

8. The APA initially signed this brief. The organization
(footnote continued)

1 was filed with the United States Supreme Court by the Society
2 for the Scientific Study of Religion and 50 renowned scholars
3 and mental health professionals, in support of defendants'
4 petition for writ of certiorari in Molko. See generally
5 Brief of Amicus Curiae of Society for the Scientific Study of
6 Religion, et al. (attached as Exhibit N).^{9/}

7 Finally, several courts have found Singer's theory so
8 lacking acceptance as to warrant its exclusion. In United
9 States v. Fishman, 743 F.Supp. 713 (N.D.Cal. 1990), the
10 court excluded Singer's testimony about the Church of
11 Scientology's supposed "influence techniques" because the Court
12 found that "her views on thought reform . . . are not generally
13 accepted within the scientific community." 743 F.Supp. at 723.
14 Most recently, Singer was excluded as an expert witness in
15 Greene v. Maharishi Mahesh Yogi, Nos. 87-0015, 87-0016
16 (D.D.C. Mar. 12, 1991) (Ex. A). The court in Greene, as in
17 Fishman, found there to be "insufficient evidence of
18 acceptability to allow the testimony to be admitted." Slip. op.

(footnote continued)

19 withdrew its name when the Board of Directors, upon learning
20 that a Task Force had been established to consider the issues
21 the amicus brief addressed, decided that "it was premature. . .
22 to endorse positions taken in the amicus brief prior to
23 completion of the task force study" Motion of the APA
24 to Withdraw as Amicus Curiae, in Molko v. Holy Spirit
25 Association (Mar. 27, 1987) (attached as Ex. M). The
26 subsequent rejection of the Task Force Report by BSERP, the APA
27 board responsible for reviewing the Report, suggests that the
28 APA would adhere to the view expressed in the amicus brief,
namely that the scientific community does not accept Singer's
theory or methodology.

9. When the brief was filed, the American Sociological
Association ("ASA") was also an amicus; however, like the APA,
the ASA withdrew its name. Neither at the time nor subsequently
did the ASA state that its withdrawal was premised on a
reassessment of and contrary conclusion about Singer's work.
See United States v. Fishman, 743 F.Supp. at 718.

1 at 14.10/
2

3 ARGUMENT

4 The proffered testimony of Singer is admissible only if it
5 (1) is that of a qualified expert; (2) addresses a "proper
6 subject"; (3) conforms with a generally accepted explanatory
7 theory; and (4) possesses sufficient probative value to outweigh
8 any prejudicial effect. See United States v. Amaral, 488
9 F.2d at 1153; United States v. Gwaltney, 790 F.2d 1378,
10 1382-83 (9th Cir. 1986), cert. denied, 479 U.S. 1104
11 (1987). Singer's proposed testimony, as detailed below, cannot
12 satisfy a number of these criteria, nor is her theory
13 "sufficiently established to have gained general acceptance in
14 the particular field in which it belongs." Frye v. United
15 States, 293 F. 1013, 1014 (D.C. Cir. 1923); see also
16 United States v. Gillespie, 852 F.2d 475, 480 (9th Cir.
17 1988) (applying Frye test); United States v. Gwaltney, 790
18 F.2d at 1381 (same).

19 I. SINGER'S TESTIMONY IS INADMISSIBLE AS IT DOES

20 NOT CONFORM TO A GENERALLY ACCEPTED THEORY

21 A. The Methodology Used by Singer Lacks

22 General Acceptance in the Scientific Community

23 1. Singer's Sample Is Biased

24 First, as Singer's critics have noted, the sample upon
25 which Singer relies for her conclusion that the Church of

26 10. See also Kropinski v. World Plan Executive
27 Council, 853 F.2d 948, 957 (D.C. Cir. 1988) (finding court
28 erred when admitting Singer's testimony given absence of
evidence that "Singer's particular theory, namely that
techniques of thought reform may be effective in the absence of
physical threats or coercion" has general acceptance).

1 Scientology purportedly engages in the systematic manipulation
2 of psychological and social influences is notably and fatally
3 skewed. Singer relies for her knowledge of and conclusions
4 about the Church of Scientology solely on interviews with former
5 members, their families, and a review of articles or books
6 published by the Church. Wollersheim Test at 2266-70 (Ex.
7 C). Furthermore most of former Scientologists whom Singer has
8 interviewed were suing or contemplating suing the Church and
9 had a clear interest in alleging that they had been somehow
10 "manipulated" and "psychologically damaged."

11 Clearly those who leave a religion or any organization are
12 a non-representative sample of all past and current members.
13 See e.g., Galanter, Unification Church ("Moonie") Drop-
14 outs: Psychological Readjustment After Leaving A Charismatic
15 Religious Group, 140 Am. J. Psychiatry 984, 988 (1983)
16 (hereinafter "Unification Church Dropouts") (noting likely
17 animosity of those who leave a group, such as Unification
18 Church). In fact, the great majority of Singer's sample have
19 self-serving reasons to characterize the Church as coercive and
20 to blame it for harm. Many are interviewed only after they
21 have initiated litigation against the Church or therapy with
22 Singer. Christofferson Test at 2770-79 (all individuals
23 upon whom Singer based her conclusion that the Church engages
24 in coercive persuasion were in treatment or litigation) (Ex.
25 E).^{11/} As one scholar has commented, "Singer's method in
26 hampered by a . . . major problem, namely, that the information

27 11. The bias in the litigation context is well-recognized.
28 See, e.g., United States v. Gambler, 662 F.2d 831, 834
(D.C. Cir. 1981).

1 she collects about the [groups] does not stand the test of
2 impartiality and objectivity." J. Saliba, Psychiatry And The
3 Cults xxii-xxiii (1987).

4 Even Singer has recognized the limitations of such a
5 sample. She has ~~conceded that self reports of individuals are~~
6 subjective. Slee Dep. at 141 (Ex. J). Moreover, an
7 article which Singer coauthored criticizes similar methodology
8 used to study allergy patients. Feingold, Singer, Freeman &
9 Deskins, Psychological Variables in Allergic Diseases, 38
10 Journal of Allergy 145 (1966) ("Singer, Psychological
11 Variables") ("In some studies the diagnosis of allergy depends
12 upon the mere self-description that one is 'allergic'. . .
13 with no attempt to confirm the diagnosis through history,
14 physical findings, or skin testing"). Nonetheless, Singer
15 relies on "mere self-descriptions" of the alleged coercive
16 nature of the Church. She makes no effort to confirm her
17 "diagnosis," either by personally observing the Church's
18 practices or comparing the tales recounted by those who have left
19 the Church to those who remain members.^{12/} Compare with
20 Galanter, Unification Church Dropouts (comparing those who left
21 Church with sample who had been recruited but not yet joined,
22 sample of active members and sample of general population).

23 12. A comparable study resting solely on current, satisfied
24 Church members would be immediately recognized for its bias and
25 limitations, even -- or particularly -- by Singer. For example,
26 she criticizes Marc Galanter's recent book which draws primarily
27 on responses of current members of groups to a questionnaire,
28 because "[t]here is little or no indication that he has had
long-term therapeutic or other contact with former members of
even the groups he studied via questionnaires." She states that
she is "wary to "express [] enthusiasm" for a work that relies
on so "narrow and non-representative" a sample. Singer, Book
Review of Marc Galanter: Cults: Faith, Healing and Coercion,
Cult Awareness Network News (Sept. 1989).

1 Singer's biased "sampling" techniques and her tautological
2 theory wholly exclude as a possibility the logical and prima
3 facie fact that individuals join and remain in the Church of
4 Scientology because they find personal satisfaction through the
5 teachings and practices of the Church. Nor does she even
6 attempt to deal with the variables which pertain when some
7 individuals voluntarily choose to cease to be Scientologists.
8 Such factors would destroy the closed circle of logic by which
9 Singer finds all who adhere to the religion to be "manipulated"
10 and all who have left, to have been "harmed."

11 For example, in an analogous context Singer has concluded
12 that the Unification Church's "sophisticated indoctrination
13 techniques," to use her labels, render individuals incapable of
14 exercising judgment; even where individuals have been subject to
15 the Church's influence for little more than two weeks. See
16 Molko v. Holy Spirit Ass'n, 46 Cal.App.3d at 1106, 1108-11,
17 252 Cal.Rptr. at 128, 130, 131. But, studies of the
18 Unification Church demonstrate that over ninety percent of those
19 exposed to its recruitment practices choose not to affiliate
20 with the Church. See e.g., E. Barker, The Making of a
21 Moonie, 146 (1984); Galanter, Psychological Induction into
22 the Large Group: Findings from a Modern Religious Sect, 137
23 Am. J. Psychiatry 1575 (1980).^{13/}

24 13. Singer's "studies" of those institutions she deems coercive
25 fail to account for other contrary data as well. For example,
26 one study, based on a comparison of those in and those who had
27 departed from a so-called "cult," found no impairment in the
28 ability of members to make sound judgments. Ungerleider &
Wellisch, Coercive Persuasion (Brainwashing), Religious Cults
and Deprogramming, 136 Am.J. Psychiatry 279, 281 (1979).
This study not only clearly conflicts with Singer's conclusion
that the Church and other religions of which she disapproves
(footnote continued)

1 Because Singer's sample is so skewed, members of her
2 professional community have dismissed her conclusions. See
3 Richardson, Classical and Contemporary Applications of
4 Brainwashing Models: A Comparison and Critique (use of only
5 former members as data "preclude[s] the possibility of drawing
6 valid generalizations"), in Bromley & Richardson, The
7 Brainwashing Deprogramming Controversy (1983). It is as if,
8 to evaluate the institution of marriage, Singer spoke only to
9 individuals in the midst of contentious divorce proceedings,
10 ignoring those who were happily married or who separated
11 amicably, or without observing interactions among any married
12 couples. The validity and reliability of this work would be
13 readily and properly disregarded. So, too, is Singer's.

14 2. Singer Has Shown No Correlation Between Church
15 Membership and Psychological Harm

16 Here, as in other cases in which Singer has attempted to
17 testify that the plaintiff was psychologically harmed by some
18 religious or other institution, Singer relies solely on her
19 interviews with the plaintiffs, and does not compare to a
20 relevant control group. As Singer's peers have noted, however,
21 this methodology is insufficient to establish a correlation,
22 let alone a causal relationship, between membership and harm.

23 (footnote continued)
24 impair and even preclude members from independent judgment,
25 Christofferson Test at 2726-29, 2927-32 (Ex. E), but its
26 conclusion rests on generally accepted methodology. Singer does
27 not acknowledge, let alone account for, this finding in her
28 work. See generally James, Brainwashing: The Myth and
 The Actuality, 61 Thought 241, 255 (1986) (emphasizing
 "implausibility of the claim" that new religions brainwash
 people, given small percentage of those attending workshops that
 join and high defection rate).

1 For the claim that there is even a correlation between
2 Church membership and psychological harm to have validity,
3 Singer would have to compare her sample to a relevant control
4 group in order to establish that these harms occur more
5 frequently in those who have been or are affiliated with the
6 Church than among those in the general population who are
7 comparable in age, economic status and other variables.

8 Compare Gorman Dep. at 169 (Ex. F) (Singer concedes she
9 has no knowledge how those in Lifespring compare to general
10 population), with Galanter, Unification Church Dropouts
11 at 985 (finding mean scores on general well-being schedule of
12 former members "no different from those of the matched sample
13 from the general population").

14 Not only does Singer concede that such data does not exist,
15 Task Force Report at 17 (Ex. I), she acknowledges the
16 limitations of the data that does exist. For example, in her
17 deposition in Slee in which she asserted that EST's thought
18 reform techniques were a causal factor in Slee's death, Singer
19 stated that "the reports of psychological harm as the result of
20 EST training remain anecdotal." Slee Dep. at 180-81 (Ex. J).
21 Singer states that in "anecdotal" reports, "observers and
22 reporters have gathered cases and presented them as anecdotes to
23 illustrate an offering of either a theoretic or speculative or
24 reporting nature in the professional literature." Id. In so
25 doing she concedes that the data is not gathered in a
26 systematic, scientific manner. Thus by her own statement, such
27 anecdotes could be used to illustrate a claim, but never to
28 prove a theory.

1 The data about the Church of Scientology is similarly
2 anecdotal: Singer has never endeavored to gather data using a
3 comparison group, to establish in any systematic manner that
4 membership in the Church correlates with harm. Nor has she
5 attempted in any way to address the many studies finding that
6 participation in new religions alleviate psychiatric distress.
7 See, e.g., Richardson, Psychological and Psychiatric
8 Studies of New Religions 209 (summarizing studies) in
9 Advances in The Psychology of Religion (Vol. 11) (Brown,
10 ed., 1985). Accordingly, her theory, even as to correlation,
11 remains speculative at best.

12 3. Singer Fails to Show that the Church
13 Caused Any Psychological Harm

14 Even if Singer had established a correlation between
15 membership in the Church and psychological distress, that alone
16 would not support a finding of causation, as Singer's "research
17 designs [do not] control for plausible rival hypotheses." J.
18 Neale & R. Leibert, Science and Behavior: An Introduction to
19 Methods of Research 13-14 (1980); quoted in Monahan &
20 Walker, Social Science in Law, 54-55.

21 For example, Singer fails to consider whether the alleged
22 psychological distress she purportedly observes in individuals
23 might be explained by pressures they are faced with in their
24 environment. Such an hypothesis is suggested by the finding of
25 scholars in other contexts that members of some new religions
26 experience relief from psychological distress upon joining and
27 that this relief is closely associated with their affinity for
28 and degree of participation in their new religion. Galanter,

1 Cults: Faith, Healing and Coercion, 34-36, 174 (1989);
2 Galanter, Unification Church Dropouts at 988. Similarly,
3 absent comparison with a control group of those who left the
4 Church voluntarily and have not sought counseling, Singer cannot
5 soundly conclude that the experience in the Church, rather than
6 deprogramming (a violent form of forcible extraction from a
7 religious body espoused by Singer) underlies the account of
8 psychological harm.

9 Singer attempts unsuccessfully to account only for the
10 rival hypothesis that the condition or conditions she observes
11 predated Church membership. She regularly, as she does in this
12 case, relies for assessment of the individual's state prior to
13 affiliation with the institution at issue solely on the
14 accounts of the individual and her or his family, ignoring the
15 obvious bias of former Church members in litigation with the
16 Church, as well as that of their family and friends.^{14/}

17 Saliba, Psychiatry and the Cults xxiii. See e.g.,
18 United States v. Gambler, 662 F.2d 834, 837 (D.C. Cir.
19 1981). Singer often does not attempt to corroborate the
20 individual's accounts by reviewing medical or other records
21 which predate the individual's affiliation.^{15/}

22 14. Singer herself, in an article she coauthored addressing
23 court testimony, cautions that a party's reports cannot be
24 accepted at face value and underscores the need to consider the
effect of the suit on the person's motivation. M. Singer & A.
Nievod, Consulting and Testifying in Court, in Handbook of
Forensic Psychology 532 (1987).

25 15. The subject's bias is only compounded by Singer's. For
26 example, she began her interviews of the Aznarans in this case
27 only after having concluded years before that the Church of
28 Scientology engaged in coercive persuasion, Christofferson
Test at 2779 (Ex. E), a technique that she generally
characterizes as producing "psychiatric casualties." See
Thought Reform Programs at 190-91. The Molko trial court
(footnote continued)

1 Moreover, when attempting to account for this rival
2 hypothesis, Singer fails to address scholarships supporting the
3 rival hypothesis. For example, she does not in any way account
4 for or refute the finding of at least one scholar who found that
5 the psychological well-being of those who attended a Unification
6 Church workshop was considerably below that of a comparative
7 sample of the general population. Galanter, Unification
8 Church Dropouts at 985-96.

9 Singer herself, in an article she coauthored, has
10 recognized studies addressing personality factors in allergic
11 disorders as marred because they exhibit the precise flaws that
12 characterize Singer's finding of a causal relationship between
13 Church membership and psychological harm. Singer,
14 Psychological Variables at 144 (Singer criticizes allergy
15 study for failing to consider whether emotional qualities were
16 present prior to illness, or were the result of other unknown
17 third factors).^{16/}

18 Singer's finding of causation is similarly flawed. To draw
19 once more on the analogy to the study of marriage, it is as if
20 one concluded, after talking to several people who were unhappy
21 in the midst of divorce, that marriage caused their problems,

22 (footnote continued)

23 assessment of Singer is thus applicable here, namely that Singer
24 "seem[s] to have reasoned backwards from [her] disapproval of
25 [the Unification Church's] methods to the conclusion that
26 Plaintiffs were not thinking freely because they were persuaded
27 by them." Molko, 198 Cal.App.3d 199, 224 Cal.Rptr. 817, 826
28 n.9 (1986).

16. Singer has recently attempted to deflect criticism of her
methodology by characterizing her conclusions as the product
of a "single case study" but to no avail. Such "studies" are in
fact only anecdotal reports, the scientific usefulness of which
is suspect.

1 without assessing whether they had been unhappy previously or
2 excluding as a cause of their unhappiness the process of
3 divorce or adjustment to the separation. Not only that, it is
4 as if all accounts of the marriage, in particular the
5 characterization of one another's role in its demise, were
6 accepted at face value.^{17/}

7 Neither Singer's methodology nor its rejection by the
8 relevant academic communities has changed since the filing
9 of the APA and ASA amicus briefs or the rejection of the
10 Task Force Report.^{18/}

11 Given Singer's skewed samples and lack of any control
12 group, she may speculate that membership in the Church caused

13
14 17. Finally, Singer's approach both to her findings of coercion
15 and causation is not amenable to testing and confrontation by
16 other professionals to ensure its validity, as the data has
17 never been published. In fact, not all of the data has even
18 been recorded. Christofferson Test at 2867-69 (Ex. E).
19 However, "[t]he scientific approach requires that all claims be
20 exposed to systematic probe." J. Neale & R. Liebert, Science
and Behavior: An Introduction to Methods of Research 13-14
(1980); see also Richardson v. Richardson-Merrell, 857
F.2d 823, 831 (D.C. Cir. 1988) (emphasizing failure of expert
to publish or offer study for peer review as factor casting
doubt on acceptance), cert. denied, ___ U.S. ___, 110 S.Ct.
218 (1989).

21 18. The data that underlies Singer's "study" of the Church of
22 Scientology is no different than that on which the Task Force
23 Report rested. The data that "caught" Singer's attention and
24 thus formed the basis for the Task Force Report discussion of
25 those new religions she disparagingly calls "cults" were nothing
26 other than "knowledge that [she] had gotten from the therapy of
27 a number of individuals that had been in cults or large
28 awareness trainings and . . . that [she] had gathered from
certain legal cases that [she] had had contact with," Slee
Dep. at 218-19, as well as that reported in literature. The
"data" upon which Singer's opinion of the Church rests also
consists similarly of "anecdotal reports" derived from a
biased sample of individuals seen for therapy or a legal
consultation, plus familiarity with some literature.

1 certain distress she identifies in the Aznarans and that the
2 Church employs techniques of coercive persuasion, but this
3 speculation has not and cannot, consistent with accepted
4 scientific principles, gain acceptance in the relevant
5 scientific community. Shatkin v. McDonnell Douglas Corp.,
6 565 F.Supp. 93, 95 (S.D.N.Y. 1983) (excluding expert whose
7 opinions were based on "assumptions that are so speculative that
8 they amount to gross conjectures"); see also Richardson v.
9 Richardson-Merrell, Inc., 857 F.2d at 829-33 (finding expert
10 testimony unsupported because of unsound basis for findings of
11 causation). Accordingly, this Court, like the courts in
12 Fishman and Greene, must exclude her testimony.

13 B. Singer's Theory of Coercive Persuasion

14 Lacks General Acceptance

15 Singer's theoretical premise, no less than her method-
16 ology, lacks general acceptance in the scientific community, as
17 it fails to distinguish the allegedly coercive practices of the
18 Church of Scientology and others she maintains use SMSPI from
19 the myriad of socially acceptable organizations that actively
20 attempt to and even successfully influence behavior. Indeed,
21 Singer's paradigm is more accurately a description of the
22 dynamic process of any group, from a college fraternity to an
23 urban political machine or even a class of law students than it
24 is a useful theoretic analysis of an undefined concept of some
25 special and specific behavior which could be labelled
26 "brainwashing" or "thought reform."

27 Singer, like Lifton, sees a continuum of influence, set off
28 at one extreme by physical restraint and punishment and at the

1 other by reason, open exchange and other nondirective
2 techniques. Singer, Group Psychodynamics in R. Berkow (ed.),
3 Merck Manual (1987); see also Task Force Report at Figure
4 1 (Ex. I).^{19/} Singer's claim -- that she, or anyone for
5 that matter, can identify with accuracy the point on this
6 continuum at which techniques of influence that do not rely on
7 threats of or actual physical force or restraint become coercive
8 -- is fraught with controversy.

9 First, scholars question whether, absent physical force or
10 threats, influence processes can be labelled as and proven to be
11 coercive, in that they could strip an individual of free will.
12 See, e.g., James, Brainwashing supra, at 254; Barker,
13 Making of A Moonie, supra, at 264-265; Solomon,
14 Programming and Deprogramming the "Moonies": Social Psychology
15 Applied, in The Brainwashing/Deprogramming Controversy 179
16 (D. Bromley & J. Richardson eds. 1983); Robbins & Anthony,
17 Brainwashing and the Persecution of Cults, 19 J. of Religion
18 and Health 66 (1980); Reich, Brainwashing, Psychiatry, and the
19 Law, 39 Psychiatry 400, 403 (1976).

20 Even the models studied by Lifton and Schein, which by all

21 19. Singer, as do Lifton and Schein, recognizes that influence
22 processes pervade not only those new religions she pejoratively
23 labels cults, but also organizations such as college
24 fraternities, the Armed Forces, mainstream Christian groups, and
25 self-help groups such as Alcoholics Anonymous. Schein,
26 Coercive Persuasion, at 275. Lifton, for example,
27 acknowledges that totalism is a "widespread phenomenon" and
28 notes the prevalence of its elements -- such as milieu control,
guilt, shame and confessional, group sanction -- in an array of
organizations, including educational, psychological, religious
and political organizations, many of which attempt to persuade
individuals to adopt and conform to their point of view.
Lifton, Thought Reform & The Psychology of Totalism 438-61
(1961).

1 accounts fall at or near the extreme of the influence continuum,
2 are of limited effectiveness. Lifton, for example, considering
3 the "accomplishments" of the thought reform program in Chinese
4 prisons in the 1950s, speaks of only six apparent converts.
5 Lifton, Thought Reform 131. Within the universities, Lifton
6 found the most common response to the "program" was that of
7 those he characterized as "adapters" -- those who were
8 "partially but not entirely convinced by the program;
9 essentially [they were] concerned with the problems of coping
10 with a stressful experience and finding a place in a new
11 society." Id. at 401. See also Schein, The Chinese
12 Indoctrination Program for Prisoners of War: A Study of
13 Attempted "Brainwashing" in Readings in Social Psychology 332
14 (Macoby, ed. 1988) - (characterizing even temporary change in
15 belief as rare and thus program as failure).

16 Second, there is no consensus about how to assess with
17 scientific validity whether an influence process lacking
18 physical force is coercive. The court in Fishman, addressing
19 this problem, stated:

20 [W]hen a seemingly fit but harmless beggar asks
21 for money, some people are inclined to give money
22 and others are not. But when a mugger holds a
23 knife at a victim's throat and asks for money,
24 most people give it. . . The Court finds general
25 acceptance within the scientific community (and
26 elsewhere) that armed mugging is sufficiently
27 coercive to overcome an average person's free
28 will. But the proffered testimony in this case

1 relates to coercive persuasion without the use or
2 threat of physical force.
3 743 F. Supp at 719. As the court's example suggests, absent
4 physical force, restraint or threats, the distinction between
5 the techniques of influence deemed acceptable persuasion and
6 those cast as coercive diminish or even collapse. James,
7 Brainwashing, 61 Thought at 255 (failure to limit use of word
8 "coercive" to instances involving the use or threat of physical
9 force "obliterate[s] the distinction between the voluntary and
10 involuntary"); see also Schein, Coercive Persuasion 275
11 (social pressures in psychoanalysis, revival meetings,
12 fraternities, AA, among others, "can be as coercive as the
13 physical constraints" described in the study).

14 As stated in Meroni v. Holy Spirit Association, in which
15 the plaintiff, like the Aznarans, sought damages for harm
16 allegedly resulting from affiliation with a newer religious
17 group:

18 The claim of brainwashing is based upon the
19 activities ... which as previously noted, are
20 commonly used by religious and other groups, and
21 are accepted by society as legitimate means of
22 indoctrination. They are not classifiable as so
23 extreme or outrageous, or offensive to society, as
24 to incur liability therefor.

25 Meroni, 119 A.D.2d 200, 506 N.Y.S.2d 174, 178 (1986).

26 Similarly, the Supreme Court recently rejected an argument
27 that the prohibition against involuntary servitude should
28 encompass "compulsion through psychological coercion." United

1 States v. Kozminski, 487 U.S. 931, 949 (1988). The Court
2 reasoned that an expansion of the definition to include
3 psychological coercion would bring within the definition "a
4 broad range of day-to-day activity," including coercion by a
5 parent who threatens to withhold affection so as to induce a
6 child to work in a family business; by a political leader who
7 uses charisma to persuade others to work without pay; and by a
8 religious leader who uses religious-indoctrination to obtain
9 personal services. Kozminski, 487 U.S. at 949; see also
10 id. at 960 (Brennan J., concurring). Singer's theory asks
11 this Court to expand the basis of liability in precisely the way
12 the Kozminski and Meroni courts rejected.^{20/}

13 Guided by scholarly criticism of theories of coercion or
14 brainwashing absent force, this Court, like Fishman, must find
15 that Singer's theory regarding the "coercive persuasion"
16 allegedly practiced by religious organizations "is not
17 sufficiently established to be admitted as evidence in federal
18 courts of law." Fishman, 743 F.Supp. at 719; see
19 also Molko v. Holy Spirit Ass'n, 252 Cal.Rptr. at
20 130-31 (emphasizing controversy about the very existence
21 of brainwashing and its effectiveness absent physical

22 20. Although the complaint falsely alleges that Vicki Aznaran
23 was briefly restrained while on the Rehabilitation Project
24 Force ("RPF") -- years after she joined the Church, Complaint
25 para. 22 -- Singer's conclusions about the coercive nature of
26 the Church and its effect on the Aznarans do not rely on this
27 alleged occurrence. Rather, according to Singer, the Aznarans
28 had long before been "systematically manipulated" by the
Church. See Expert Interrogatory Responses at 8-11 (Ex. B)
(recounting early experiences in Church as evidence of undue
influence). Moreover, it would be absurd to maintain that this
alleged force was integral to the supposed coercion, given that
the alleged experience on the RPF prompted the Aznarans'
departure from the Church. See Complaint paras. 24-28.

1 force or restraint).^{21/}

2 II. SINGER'S THEORY OF COERCIVE PERSUASION
3 CANNOT, CONSISTENT WITH THE FIRST
4 AMENDMENT, UNDERLIE PLAINTIFFS' CLAIM

5 Concerted efforts to change the behavior or ideas of
6 others, even when deemed coercive, have consistently been
7 accorded First Amendment protection and thus been immune from
8 tort liability in the absence of physical force or the threat of
9 force. NAACP v. Claiborne Hardware, 458 U.S. 886 (1982)
10 ("Speech does not lose its protected character, however, simply
11 because it may embarrass others or coerce them into action");
12 see also Organization for a Better Austin v. Keefe, 402
13 U.S. 415, 419 (1971) ("The claim that the expressions were
14 intended to exercise a coercive impact on respondent does not
15 remove them from the reach of the First Amendment"). Like the
16 speech protected in Claiborne Hardware, the speech underlying
17 the Aznarans' complaint is designed to entice individuals to
18 participate, to change their patterns, and to identify publicly
19 with that which may be unpopular. However, unlike the speech
20 involved in Claiborne Hardware, the speech alleged to
21 constitute or underlie the Church's "systematic manipulation of
22 social and psychological influence" is protected not only by the
23 speech, but also the religion, clause of the First Amendment.

24 In fact, numerous courts, including this Circuit, have

25 21. See also United States v. Kozminski, 821 F.2d 1186,
26 1194-95 (6th Cir. 1987), (en banc; id. at 1211
27 (Krupansky, J., concurring) (characterizing expert's theory of
28 psychologically induced servitude absent forceful physical
confinement as a thesis "which has its basis in an unproved
hypothesis . . . and which has no acceptance in the scientific
field to which it belongs"), aff'd 487 U.S. 931 (1988).

1 dismissed similar, if not virtually identical claims involving
2 "brainwashing" or comparable conduct because of the threat these
3 actions pose to religious liberty. In Paul v. Watchtower
4 Bible Tract Society, 819 F.2d 875 (9th Cir.), cert.
5 denied, 484 U.S. 926 (1987), the Ninth Circuit held that the
6 free-exercise clause barred tort liability as a result of the
7 Jehovah-Witness religious practice of shunning: "No physical
8 assault or battery occurred. . . . Offense to someone's
9 sensibilities resulting from religious conduct is simply not
10 actionable in tort. Without society's tolerance of offenses to
11 sensibility, the protection of religious differences mandated by
12 the first amendment would be meaningless." Id. at 883
13 (citations omitted).

14 In fact, the process Singer labels coercive has been
15 recognized as essential to or indistinguishable from religious
16 conversion and thus constitutionally protected. See, e.g.,
17 Meroni v. Holy Spirit Association for Unification, 119 A.D.2d
18 200, 506 N.Y.S.2d 174, 177-78 (2d Dept. 1986) (claim of
19 brainwashing failed to state a cause of action because premised
20 on activities "commonly used by religio[ns] . . . [and] accepted
21 by society as legitimate means of indoctrination"); Katz v.
22 Superior Court, 73 Cal.App.3d 985, 986-87, 141 Cal.Rptr. 234,
23 255-56 (1977) (First Amendment bars inquiry into whether
24 religious affiliation resulted from faith or coercive
25 persuasion, as such a determination would inevitably require
26 questioning of religious beliefs); George v. International
27 Society for Krishna Consciousness, 213 Cal.App.3d 729, 262
28 Cal.Rptr. 217, 236 (1989) (false imprisonment claim premised on

1 brainwashing "no more than an attempt to premise tort liability
2 on religious practices the Georges find objectionable," and thus
3 barred by the First Amendment); Lewis v. Holy Spirit Ass'n,
4 589 F.Supp. 10, 12 (D. Mass 1983) (dismissing tort claims
5 premised on alleged brainwashing).^{22/}

6 As Paul, Meroni and Katz illustrate, courts and
7 juries, no less than legislatures, cannot burden the free
8 exercise of religion. See Paul, 819 F.2d at 880. Courts
9 have adhered to the principle set forth in Prince v.
10 Massachusetts, 321 U.S. 158 (1944), that "[r]eligious
11 activities which concern only members of the faith are and ought
12 to be free -- as nearly absolutely free as anything can be."
13 Id. at 177 (Jackson, J., concurring). To permit juries to
14 distinguish among conversion practices would frustrate the First
15 Amendment principle that religious faiths be treated alike and
16 surely inhibit religious doctrine. Goldman v. Weinberger,
17 475 U.S. 503, 511-13 (1986) (Stevens, J., concurring); Paul,
18 819 F.2d at 883.

19 Simple consideration of the effect on the Church of
20 Scientology were Singer's theory of thought reform advanced
21 reveals the "pernicious rearrangement" in the relationship
22 between the Church and state that would result and thus the
23 theory's incompatibility with the First Amendment. Rayburn v.

24 22. Molko v. Holy Spirit Ass'n 46 Cal.3d 1092, 252 Cal.Rptr.
25 122 (Cal. 1988), is neither controlling nor contrary to this
26 authority. The Supreme Court of California in that case failed
27 to dismiss claims that involved allegations that the Unification
28 Church subjected plaintiffs to coercive persuasion only to the
extent the claims were premised on deception. 46 Cal.3d at
1116-23, 252 Cal.Rptr. at 135-39. No claim of deception is
made in the Aznarans' complaint.

1 General Conf. of Seventh Day Adventists, 772 F.2d 1164, 1169
2 (4th Cir. 1985), cert. denied 478 U.S. 1020 (1986).

3 Singer's theory could be invoked by all ex-members of the Church
4 to obtain damages for their participation in the Church.

5 Imposition of tort liability for the beliefs and practices
6 negatively cast by Singer as "sophisticated techniques" of
7 influence would amount to little less than a prohibition of
8 fundamental Church precepts and thus of the Church itself, and
9 would permit a result already found by this Circuit to restrict
10 impermissibly free exercise. Paul, 819 F.2d at 881.

11 Singer's theory of psychological coercion as applied to
12 religious practices is barred by the First Amendment, as the use
13 of any standard other than physical force to assess conversion
14 practices would impermissibly interfere with the free exercise
15 of religion.

16 III. SINGER'S BIAS DISQUALIFIES HER FROM
17 TESTIFYING AS AN EXPERT

18 Singer's predisposition to view certain organizations,
19 which she characterizes pejoratively as "cults," as engaging
20 in thought reform is so great as to strip her of the objectivity
21 essential for her opinion to have the probative value necessary
22 for it to be admissible. Although bias is often an issue going
23 to the weight of the expert testimony, it can reach such
24 proportions as to render the testimony inadmissible. Thus,
25 "where an expert becomes an advocate for a cause, [s]he
26 therefore departs from the ranks of an objective expert witness,
27 and any resulting testimony would be unfairly prejudicial and
28 misleading." Viterbo v. Dow Chemical Co., 646 F.Supp. 1420,

1 1425-26 (E.D. Tex. 1986), aff'd, 826 F.2d 420, 422-24 (5th
2 Cir. 1987); see also Proteus Books Ltd. v. Cherry Lane
3 Music Co., 873 F.2d 502, 515 (2d Cir. 1989) (affirming
4 finding that witness was not qualified to testify as an expert
5 because he was an interested party in case).

6 Singer's bias far exceeds that of one who simply testifies
7 repeatedly and even exclusively, for one side in a recurring
8 dispute, a point amply illustrated by one account she has given
9 for the APA's rejection of the Task Force Report. She explains
10 in a declaration "that a Lifespring operative, Leonard
11 Goodstein, and Newton Maloney arranged to have [the] report
12 rejected." Miller Decl. at para. 43 (Ex. D). Similarly,
13 she contends that the APA disbanded the Task Force "because they
14 were having so much pressure from various cultic organizations
15 that they really had not been aware of the amount of pressure
16 and harassment that was going to be put upon them." Gorman
17 Dep. at 20 (Ex. F). Thus, she readily attributes any action
18 disfavorable to her as the work of "cults."

19 Even more important, her bias has colored her search for
20 and analysis of evidence upon which to form an opinion as to the
21 existence and cause of an individual's psychological harm. As a
22 result, the evidence underlying her opinion that an organization
23 caused a particular stress, in this case as well as others, is
24 "so lacking in probative force and reliability that no
25 reasonable expert could base an opinion on that data."
26 Viterbo, 646 F.Supp. at 1424.^{23/}

27 23. For example, in Singer's deposition in Slee v. Werner
28 Erhard, she stated that the stress of the EST training program
was a causal factor in the plaintiff's death. Yet, Singer
(footnote continued)

1 Singer's prompting and characterization of plaintiffs'
2 statements is so transparent as to amount to little less than
3 coaching. For example, Singer states after listening to Richard
4 Aznaran's account of his life prior to joining the Church:

5 So when you went to Scientology you came from a
6 background where you could pretty much trust what
7 people said, that it was you know, just basic
8 American good will and trust.

9 Interview of February 4, Tape 1 at 12 (Ex. 0). However,
10 nothing in Aznaran's previous description suggested Singer's
11 remark, see Ex. 0 at 9-12, although such a characterization
12 comports with Singer's opinion that those who join the new
13 religions and other organizations she labels "cults" are
14 "trusting."

15 Throughout the interviews, Singer fails to question the
16 tales as recounted by the Aznarans, instead offering glosses for
17 their statements that support her theory and language to bolster
18 their stories. For example, when telling of his entry in the
19 Church, Richard described the period preceding it, shortly after
20 his return from Vietnam, as "pretty mixed up" and "confusing,"
21 stressing that at the time he began his affiliation with the

22 (footnote continued)

23 conceded that she had no knowledge whether Slee had revealed any
24 trauma during the workshop, whether he had been berated or of
25 his general state of mind during the training. Although Slee's
26 death "was the result of something that occurred in his
27 cardiovascular system," she did not know what Slee's normal blood
28 pressure was or whether he suffered from hypertension, nor did
she consider it relevant that his father had had a heart murmur.
Slee Dep. at 125, 150 (Ex. J). In fact, she had not even
read the autopsy report. Id. at 335. Singer's willingness
to force facts to meet her preordained conclusion indicates her
clear bias and rejection of professional standards.

1 Church he "was still messed up." Interview of February 4, 1989,
2 Tape 1 at 2-3, 16-17 (Ex. 0). Singer, having listened to these
3 statements, asks: "Now were you truly messed up or was it just
4 the normal state that other men that had been in Vietnam
5 felt[?]" Richard responded, "Oh no, it was just normal." Id.
6 at 17. Thus, Singer ignored Richard's prior statements and
7 coached Richard to characterize himself as "normal" by
8 presenting him with the choice only between being "truly messed
9 up" and "normal."

10 Similarly, after Vicki tells of her shock upon seeing her
11 sister be kind to a retarded man, Singer does not inquire about
12 Vicki's general attitude toward retarded persons, but instead
13 concludes, without basis in the interviews, "They'd [the Church]
14 been able to so detach you from your earlier compassion, your
15 whole view . . ." Interview of February 5 at 38 (Ex. P).^{24/}

16 The interviews are also replete with instances in which
17 Singer casts aspersions on the Church or the Aznarans'
18 experiences as abnormal. For example, after Richard describes
19 for Singer the Church's intolerance for a person's delay in
20 responding to questions, Singer states: "You know what strikes
21 me so amazingly is, the more I hear of these examples, the more

22 ^{24.} The exchange around Richard's concentration provides
23 another illustration. Richard described for Singer the
24 difficulty he had had when attempting to go to college soon
25 after leaving the Church. Singer responds: "Yeah, so that your
26 native endowment had already been established as superior, and
27 then you come out and have trouble going to college," on the
28 basis of Richard's statements that he had a high score he
obtained on an Air Force test and the ease with which he went
through air traffic control school. Interview of February 5 at
26 (attached as Exhibit P), without asking about Richard's prior
school experience nor probing about his statements that he
"probably didn't really apply [himself] that well" while in high
school. Interview of February 4 at 11 (Ex. 0).

1 the desire is to have a zombie-like Manchurian Candidate-like
2 person that obeys without thinking, without delay, and does
3 exactly what the Scientology policy is to be." Interview of July
4 28, 1989 at 54 (attached as Exhibit Q). See also id. at
5 17 (coaches Richard to describe the Church as more coercive than
6 the military).

7 The self-serving accounts of the plaintiffs, particularly
8 when prompted by Singer, can hardly provide reliable support for
9 the proffered opinion that the Church of Scientology caused
10 plaintiffs harm. The Sixth Circuit's opinion in Viterbo is
11 instructive. In that case, the expert, unlike Singer, at least
12 sought to rely, in addition to the plaintiff's account, on tests
13 that he conducted to support his findings that plaintiff's
14 physical ailments were caused by exposure to a particular
15 pesticide. Having concluded those tests were unfounded or
16 incapable of supporting the conclusion, the court held that
17 plaintiff's statements did not provide the "foundation and
18 reliability necessary to support expert opinion. . . . Indeed,
19 [the] testimony is little more than [plaintiff's] testimony
20 dressed up and sanctified as the opinion of an expert." 826 F.2d
21 at 424. Accordingly, the court affirmed the exclusion of the
22 expert testimony. Id. Singer's testimony, like that of the
23 expert in Viterbo, must be excluded.

24 IV. THE PREJUDICIAL VALUE OF SINGER'S TESTIMONY,

25 WERE IT ADMITTED, FAR EXCEEDS ANY PROBATIVE VALUE

26 Even if Singer's testimony were found to have probative
27 value -- which it does not for the reasons set forth above -- it
28 still must be excluded. Singer's proposed testimony that the

1 Church of Scientology "coercively persuade[d] the Aznarans to
2 blindly adhere to its directives through the creation [of] an
3 identifiable system of control, domination and obedience," see
4 Expert Interrogatory Responses at 17 (Ex. B), is so
5 inflammatory that it would serve only to prejudice the jury
6 against the Church. See Fed.R.Evid. 403. Her theory,
7 set forth by an "expert," does no more than offer legitimacy to
8 negative value judgments about the Church and to a refusal to
9 accept that individuals could choose to adopt the beliefs and
10 way of life of the Church of Scientology. United States v.
11 Amaral, 488 F.2d 1148, 1152 (9th Cir. 1973) (risk of undue
12 prejudice is particularly great with expert testimony because of
13 "aura of special reliability and trustworthiness" surrounding
14 such testimony); see also United States v. Gillespie, 852
15 F.2d 475, 480 (9th Cir. 1988). Similarly, in this case,
16 Singer's testimony would be extremely prejudicial and thus must
17 be excluded.

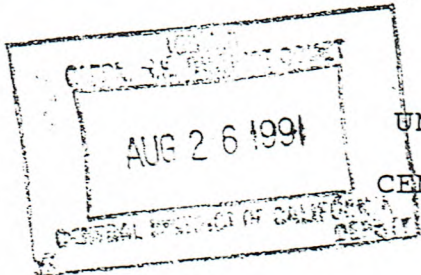
18 CONCLUSION

19 The court in Fishman held that the issue of whether
20 Singer's unsupported theories fail to satisfy the Frye test
21 "is not one of first impression among the federal courts."
22 Fishman, 743 F.Supp at 718. Indeed, an ever growing body of
23 federal case law has resoundingly rejected Singer's unsupported
24 and prejudicial theories. Guided by the scholarly criticism set
25 forth above and by this overwhelming body of precedent, this
26 Court, like the court in Fishman, in Greene and in
27 Kropinski must reject Singer's theories and exclude the
28 testimony of Margaret Singer from this action.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 VICKI J. AZNARAN and RICHARD N.)
12 AZNARAN,)

13 Plaintiffs,)

14 vs.)

15 CHURCH OF SCIENTOLOGY OF)
16 CALIFORNIA, et al.,)

17 Defendants.)

18 AND RELATED COUNTER CLAIM)
19)

No. CV-88-1786-JMI (Ex)

PLAINTIFFS' OPPOSITION TO
MOTION TO EXCLUDE EXPERT
TESTIMONY

Date: September 9, 1991
Time: Discretionary
Ct: Hon. James M. Ideman

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 VICKI J. AZNARAN and RICHARD N.) No. CV-88-1786-JMI (Ex)
AZNARAN,)
12)
Plaintiffs,)
13)
vs.) PLAINTIFFS' OPPOSITION TO
14) MOTION TO EXCLUDE EXPERT
CHURCH OF SCIENTOLOGY OF) TESTIMONY
15 CALIFORNIA, et al.,)
16)
Defendants.)
17)
18)
19)
AND RELATED COUNTER CLAIM)
20)
21)
22)

20 I. THE CHALLENGED EXPERT TESTIMONY, IN PART, ADDRESSES
21 THE PSYCHOLOGICAL HARM CAUSED BY SCIENTOLOGY'S
22 CONDUCT TOWARD PLAINTIFFS.

23 Among other aspects consequent to plaintiffs' involvement with
24 defendants, Dr. Singer will testify to the nature and extent of
25 psychological harm sustained by plaintiffs. See, Defendants' Ex. B,
26 Plaintiffs' First Further Responses to Defendants' Third Set of
27 Interrogatories, at 24-29 ("Expert Responses"). Specifically, Vicki
28 Aznaran suffers from post traumatic stress disorder and a recurrent

1 major depression and Richard Aznaran from a recurrent major
2 depression and dysthemia. Id. at 26-27, 29. Such testimony will
3 facilitate the acquisition of knowledge by the jury and is accordance
4 with a generally accepted explanatory theory. United States v.
5 Amaral (1973) 488 F.2d 1148, 1152. The aforementioned diagnoses are
6 specifically addressed and set forth in the Diagnostic and
7 Statistical Manual of Mental Disorders (3rd Ed. Revised 1987)
8 published by the American Psychiatric Association and thus are in
9 accordance with a generally accepted explanatory theory.

10 II. THE EXPERT TESTIMONY AS IT APPLIES
11 TO DEFENDANTS' BRAINWASHING OF PLAINTIFFS
12 IS IN ACCORDANCE WITH THAT WHICH IS GENERALLY
13 ACCEPTED BECAUSE AN INGREDIENT OF SUCH
14 BRAINWASHING IS FORCE AND THE THREAT THEREOF. 1/

15 As set forth in Part I,B of the instant motion, defendants
16 assert that there cannot be a thought reform program in the absence

17
18 1. It is actually an incorrect use of the term of art to
19 refer to "brainwashing." The term "brainwashing" was first
20 introduced into Western parlance by the reporter, Edward Hunter.
21 Hunter, Brainwashing In Red China (1953) New York: Vanguard Press.
22 One of Hunter's Chinese informants had told him of "hsi nao" which
23 translated into "brain cleansing." The term "thought reform" is a
24 more accurate translation of the Chinese term which describes the
25 process.

26 The Chinese term for thought reform, ssu-hsiang kai-tsao,
27 literally means the remaking or the reconstructing of thought. As
28 "thought" in the Communist vocabulary is practically synonymous with
29 ideology, "thought reform" and "ideological remolding" are almost
30 synonymous. Chen, Thought Reform of the Chinese Intellectuals (1960),
31 Hong Kong: Hong Kong University Press, at 72. Lifton, Chinese
32 Communist "Thought Reform": Confession And Re-Education Of Western
33 Civilians (1957) 33 New York Academy of Medicine 626 ("The Chinese
34 Communists have developed a peculiar brand of soul surgery which they
35 practice with impressive skill - the process of "thought reform.")

36 For the purposes of this discussion, thought reform, coercive
persuasion and brainwashing will be used interchangeably.

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1 of force. ^{2/} The facts in this case, however, are replete with both
2 threat of force and the actual implementation of force. ^{3/} See,
3 Expert Responses at 10-12, 14-24; Plaintiffs' Statement of Genuine
4 Issues [Statute of Limitations, at Fact No. 4.

5 The threat of the most extreme sanction, that of being declared
6 a "suppressive person" and being subject to the imposition of the
7 "Fair Game" ^{4/} policy was omnipresent. Also omnipresent was the
8 sanction of being sentenced to the Rehabilitation Project Force and
9 the economic sanction of the "freeloader debt."

10 Thus, the very ingredient the absence of which defendants would
11 have Dr. Singer's testimony rendered beyond the ken of general
12 acceptability is, in fact, present. The definition set forth in

13
14 ² See also, defendants' Ex. L (Amicus Brief in California
15 Supreme Court at 24-26) and Ex. N (Amicus Brief in United States
16 Supreme Court at 8-11) wherein amici in the Molko litigation assert
17 the position that threat of force is a necessary ingredient of a
18 thought reform program. Defendants make the false claim that the
19 arguments set forth in these briefs were not addressed by the
20 California Supreme Court. Footnote 11 to the Molko opinion, cited by
21 defendants, makes no reference to any of the briefs submitted by
22 amici. It is limited to arguments submitted by the Moon Church only.

23 ³ The Court is reminded to carefully consider the arguments
24 made by Scientology, particularly in light of its penchant for
25 omitting unfavorable facts. For example, see footnote 2 to
26 Plaintiffs' Statement of Genuine Issues [First Amendment] for an
27 enumeration of certain facts pertaining to the use of force that were
28 omitted by Scientology's selectively skipping pages in citations to
29 alleged sequential pages of Ms. Aznaran's deposition testimony.

30 ⁴ Fair Game is a policy to be enforced against "enemies" of
31 Scientology or "suppressive persons." According to the policy, such
32 persons "[m]ay be deprived of property or injured by any means by any
33 Scientologist without any discipline of the Scientologist. May be
34 tricked, sued or lied to or destroyed." Allard v. Church of
35 Scientology of California (1976) 58 Cal.App.3d 439, 443, fn. 1; see
36 also, Wollersheim v. Scientology 212 Cal.App.3d 872, 880, pet. for
37 cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298
38 (1991) ["Scientology's retribution policy, sometimes called 'fair
39 game.'"]; Church of Scientology of California v. Armstrong (7/29/91)
40 91 Daily Journal D.A.R. 9172, 9174 [Armstrong declared suppressive
41 person, labelled an enemy of the church and subjected to fair game
42 policy.]

1 Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, cert. denied
2 490 U.S. 1084 did not require force or threat thereof in order that
3 brainwashing be present. Even under defendants' contention, however,
4 that such force is required, Dr. Singer's testimony stands on its
5 merits. See, United States v. Fishman (N.D.Cal. 1990) 743 F.Supp.
6 713, 718-19 (Physical coercion required in order to brainwash);
7 Defendants' Ex. A, Greene v. Maharishi Mahesh Yogi (D.D.C. 1991) No.
8 87-0015 at 12-14 (same) and contrast, Wollersheim v. Church of
9 Scientology (1989) 212 Cal.App.3d 872, 880 (Dr. Singer testifies how
10 Scientology's practices were comparable to brainwashing and thought
11 reform aggravating plaintiff's mental illness).

12 Since the use of force, as well as the threat thereof, is an
13 integral ingredient of the scheme by which Scientology dominated
14 plaintiffs, Dr. Singer's opinions that such domination was the
15 consequence of a thought reform program is in accordance with what is
16 a generally accepted explanatory theory.

17 III. THOUGHT REFORM IS A SPECIES OF UNDUE INFLUENCE

18 AND AS SUCH DOES NOT REQUIRE THE USE OF
19 FORCE, OR THREAT THEREOF, IN ORDER
20 TO DOMINATE PLAINTIFFS' WILL SO AS
21 TO MAKE IT SCIENTOLOGY'S POSSESSION.

22 A. Introduction.

23 The tone of defendants' contentions is that Scientology did not
24 employ any force, or threat thereof, on the Aznarans. The tone of
25 defendants' contentions also appears to disregard the fact that Dr.
26 Singer's opinions are based upon what was the Aznarans' specific
27 experience.

28 Defendants characterize what they label Dr. Singer's "theory" as

1 something that she had conjured up out of the ether. In fact, Dr.
2 Singer has been a student of thought reform for almost 40 years.
3 See, e.g. Strassman, Thaler [Singer] & Schein, "A Prisoner of War
4 Syndrome: Apathy As A Reaction To Severe Stress" 112 American J. of
5 Psychiatry (1956) 998. ^{5/}

6 Scientology would have this Court order that Dr. Margaret Singer
7 not to testify because what has been labelled her "theory" does not
8 satisfy the requisites of Federal Rule of Evidence 702; it is not a
9 generally accepted explanatory theory.

10 The entire thrust of defendants' assault, however, is not upon
11 Dr. Singer. Rather, the focus of this concentrated attack is
12 directed at the postulate that in order to subject an individual to
13 undue influence, force or the threat thereof is not necessarily an
14 essential ingredient. In this light, the actual focus of the instant
15 motion is not directed at Dr. Singer. It is directed at the
16 conceptual proposition that an individual can be forced to do that
17 which otherwise he would never do without any threat of violence
18 whatsoever. By its argument Scientology would strike from human
19 experience, from the English language, and from the annals of
20 jurisprudence, any notion that individuals can be the subject of and
21 vulnerable to manipulation by the use of fraud and the imposition of
22 undue influence. The suggestion is, of course, ludicrous, and
23 ignores common law principles so basic that they have long be
24 codified. ^{6/} Nonetheless, the means of implementing the premise

25 _____
26 ⁵ A copy of Dr. Singer's curriculum vitae is submitted as
Plaintiffs' Exhibit A.

27 ⁶ The essential elements which must be present in order to
28 find a legal consent are that such consent must be (1) free,
(2) mutual and (3) communicated by each to the other. California
(continued...)

1 requiring "a gun at the head" has been quite effective. Plaintiffs
2 submit that the ultimate objective is to discredit the landmark case
3 which has reverberated through the halls of First Amendment
4 jurisprudence: Molko v. Holy Spirit Association (1988) 46 Cal.3d
5 1092, cert. denied 490 U.S. 1084.

6 Molko stands for a number of profound legal principles. It
7 affirms the right of the individual to be free of fraudulent and
8 coercive schemes, the implementation of which would usurp his
9 sovereign capacity for self-reliance - the ability to reason and
10 the capacity to exercise an informed consent - and the independent
11 exercise of free choice. It stands for the proposition that an
12 individual's independent exercise of free choice can be captured and
13 controlled by an outside agency without the person's knowledge or
14 consent, and that such usurpation can be accomplished by fraud and by
15 undue influence - without any threat of force. Finally, Molko
16 stands for the proposition that the ascription of religious status to
17 such an usurping organization shall not result in its immunization
18 from accountability for the consequences of such intrusive and
19 totalistic conduct.

20 The reason that Margaret Singer is an effective expert is
21 because she can explain in plain, everyday, common-sense English, the
22 intricacies of the manner in which fraud and undue influence
23 interrelate to subvert the volition of the victim without his or her
24 knowledge or consent. Even though the notion of fraud is basic to

25
26 ⁶(...continued)
27 Civil Code § 1565. Consent that is apparent is not actually real or
28 fraud, (4) undue influence or (5) mistake. California Civil Code §
1567. Fraud is defined in California Civil Code § 1572. Undue
influence is defined in California Civil Code § 1575.

1 human experience and to the law, sometimes it is so complex and
2 sophisticated that it requires the explanation of an expert to make
3 it clear. "The law does not define fraud; it needs no definition; it
4 is as old as falsehood and as versable as human ingenuity." Weiss v.
5 United States (5th Cir.1941) 122 F.2d 675, 681.

6 B. Undue Influence Requires

7 No Threat Of Force To Be Effective.

8 The California Supreme Court held that the deceptive recruiting
9 practices of the Moon Organization (Unification Church), the very
10 same practices which in a conservatorship setting a lower California
11 court deemed to have been violative of the First Amendment, ^{7/}

12
13 ⁷ The lower California appellate court case is, of course,
14 Katz v. Superior Court (1977) 73 Cal.App.3d 985. It was primarily
15 upon the Katz decision that the trial court and court of appeal
16 rested their respective analyses in Molko. See, Order Granting
17 Summary Judgment filed October 23, 1983, San Francisco Superior Court
18 No 769-529 at 17-20. Attached hereto as Exhibit A; Court of Appeals
19 decision in Molko v. Holy Spirit Association (1986) 224 Cal.Rptr.
20 817, 826-28. The California Supreme Court reasoned that the
21 rationale articulated in Katz did not apply to the situation in
22 Molko. The court stated:

23 "The Katz court faced a legal question markedly different from
24 that now posed: it considered whether a court could determine if an
25 asserted religious conversation 'was induced by faith or by coercive
26 persuasion.' (Katz v. Superior Court, supra, 73 Cal.App.3d at p. 987,
27 141 Cal.Rptr. 234.) In other words, the Katz court had to decide
28 whether a court 'question the validity' of a person's stated belief
29 because someone else claimed that person was brainwashed. (Ibid.)

30 "Again in contrast, the legal question here does not require a
31 court to determine whether anyone's faith, current or past, is or was
32 real. As stated above, Molko and Leal do not question the Church's
33 beliefs. Neither do they challenge the 'validity' of their former
34 faith; they state quite plainly that their erstwhile beliefs in the
35 Unification Church were sincere. The legal question is simply whether
36 a religious organization can be held liable on a traditional cause of
37 action in fraud for deceiving non-members into subjecting themselves,
38 without their knowledge or consent, to coercive persuasion.

39 " The Court of Appeal held that although Katz was different in
40 certain ways, its analysis compelled the conclusion that to consider
41 plaintiffs' fraud claims would require 'questioning the authenticity
42 (continued...)

1 constituted fraud and undue influence. The Molko court's definition
2 and use of brainwashing demonstrated that the Court considered it to
3 be the functional equivalent of undue influence.

4 The Supreme Court defined the techniques of brainwashing as
5 follows:

6 "The specific methods of indoctrination vary, but the basic
7 theory is that brainwashing 'is fostered through the creation of
8 a controlled environment that heightens the susceptibility of a
9 subject to suggestion and manipulation through sensory
10 deprivation, physiological depletion, cognitive dissonance, peer
11 pressure, and a clear assertion of authority and dominion. The
12 aftermath of indoctrination is a severe impairment of autonomy
13 and [of] the ability to think independently, which induces a
14 subject's unyielding compliance and the rupture of past
15 connections, affiliations and associations. [Citation.]"

16 Molko, 46 Cal.3d at 1109. The court also defined undue influence as
17 follows:

18 "Undue influence is 'the use, by one in whom a confidence is
19 reposed by another, or who holds a real or apparent authority
20

21 ⁷(...continued)

22 and the force' of the Church's teachings. We disagree. The
23 challenge here, as we have stated, is not to the Church's teachings
24 or to the validity of a religious conversion. The challenge is to
25 the Church's practice of misrepresenting or concealing its identity
26 in order to bring unsuspecting outsiders into its highly structured
27 environment. This practice is not itself belief - it is conduct
28 'subject to regulation for the protection of society.' (Cantwell v.
Connecticut, supra, 310 U.S. at p. 304.) Molko, 46 Cal.3d at 1116-
17.

29 Simply, the arguments submitted by Sceintology in the case at
30 bar are recapitulations of those made during the course of the Molko
litigation, at trial and on appeal all the way to the United States
Supreme Court. As they were rejected before, they should be rejected
now.

1 over him, of such confidence or authority for the purpose of
2 obtaining an unfair advantage over him.' (Civ. Code, § 1575.)
3 Stated another way, undue influence is 'that kind of influence
4 or supremacy of one mind over another by which that other is
5 prevented from acting according to his own wish or judgment'
6 [citation.][italics added by Supreme Court]; it occurs when 'one
7 party uses [its] dominant psychological position in an unfair
8 manner to induce the subservient party to consent to an
9 agreement to which he would not have otherwise consented.'
10 [citation.]"

-- 11 Id. 46 Cal.3d at 1124.

12 In consequence of undue influence/brainwashing Molko "lost his
13 ability to make independent decisions as a result of being deceived
14 into submitting unknowingly to coercive persuasion . . . there is a
15 triable issue as to whether, by means of the alleged deception, the
16 Church established and used its dominant psychological position and
17 its confidential relationship with Molko 'for the purpose of
18 obtaining unfair advantage over him' with regard to [the money they
19 paid for courses and auditing]." Id. 46 Cal.3d at 1125.

20 The Molko litigation, particularly in the California and United
21 States Supreme Courts, specifically addressed the question
22 whether brainwashing necessarily required force, or threat thereof,
23 in order to be effective. ^{8/} As a review of defendants' exhibits L
24 and N will show, the same arguments which were rejected by the

25
26 ⁸ See, defendants' Ex. L (Amicus Brief in California Supreme
27 Court at 24-26) and defendants' Ex. N (Amicus Brief in United States
28 Supreme Court at 8-11.) Neither high court found these arguments
persuasive. The California Supreme Court reversed the holdings of
the trial court and the Court of Appeal, that had been predicated
upon Katz-type arguments. The United States Supreme Court denied
certiorari.

1 California and United States Supreme Courts are being advanced again
2 in this Court.

3 "Any species of coercion, whether physical, mental, or moral,
4 which subverts the sound judgment and genuine desire of the
5 individual, is enough to constitute undue influence." In re Bible
6 Speaks (Bkrtcy.D.Mass. 1987) 73 B.R. 848, 858-59; see also, Nelson v.
7 Dodge (1949) 68 A.2d 51 (undue influence imposed by spiritual
8 advisor).

9 C. The Postulate That Brainwashing Does
10 Not Require Threat Of Force Is Consonant
11 With The Classic Studies In The Field

12 In the 1950s certain shocking events occurred in Hong Kong.
13 American Prisoners who suddenly had been released from Chinese
14 prisons appeared at the border at Hong Kong "looking calm, fit and
15 sane. They praise their captors, praise Communism, and damn 'Yankee
16 Imperialism.' It is said that their old acquaintances are amazed, and
17 that their political attitudes seem to have 'changed completely.'" Hinkle & Wolff, Communist Interrogation And Indoctrination of
18 "Enemies of the State" (1956) 76 Archives of Neurology and Psychiatry
19 115, 163, hereinafter Communist Interrogation and Indoctrination.
20

21 Upon their release from China, the former prisoners set about a
22 process of reality testing. Without committing himself, each newly
23 released man characteristically began to talk to friends, and to
24 listen to accounts of what happened while he was away in prison. He
25 began to read. He began to compare what was told to him in prison
26 with the facts as they were observed and reported in the American
27 Press. Within a few months he had readjusted himself to the outside
28 world and resumed a set of beliefs roughly similar to those he held

1 prior to his imprisonment. Many became bitterly anti-Communist. Id.
2 at 165.

3 A thorough treatment of the procedures which can implemented for
4 the purpose of causing a person to embrace what he once rejected and
5 to reject what he once embraced is far beyond the scope of this
6 brief. However, Scientology has asserted that the concept,
7 incorrectly translated from the Chinese, called "brainwashing,"
8 refers to something no more substantial than to pejoratively refer to
9 one who has been persuaded to adopt an opinion with which he who
10 would apply the term disagrees.

-- 11 The Aznarans disagree. They do not believe that the procedures
12 to which the term refers are innocuous. They believe that those
13 procedures are real and can be identified by the consistent form they
14 take. They do not believe that the procedures are content-specific.
15 They believe that one who wishes to establish a social system of
16 control based upon the application of those procedures can implant
17 almost whatever ideas he chooses.

18 Although a comprehensive study on the phenomenon is beyond the
19 scope of this brief, the Aznarans believe more than a superficial
20 discussion is necessary because of the total assault Scientology has
21 unleashed upon their expert witness. By means of the discussion to
22 follow, the Aznarans hope to communicate not only the nature of the
23 process, but that knowledge of this process has been available for 40
24 years.

25 There are three primary cultural sources of first-hand
26 information concerning the method and procedures designed to
27 "manipulate human thought or action against the desire, will or
28 knowledge of an individual" Encyclopedia Britannica Micropodia (1975)

1 Chicago, Vol. II at 229 - in other words, to alter the way an
2 individual relates to himself and the world around him. They are
3 Russian, Chinese and Korean. "Reports from all these sources confirm
4 each other to such a degree that they create considerable confidence
5 in the general picture that emerges from them." Frank, J.D.,
6 Persuasion and Healing (Revised Ed. 1974) New York: Schocken Books
7 (Copyright 1961 The Johns Hopkins University Press.)

8 The method seems to have originated in connection with certain
9 research arising in conjunction with experiments performed on dogs by
10 the Russian neurophysiologist I.P. Pavlov. W. Sargant, The Battle
11 For The Mind, (1957) Greenwood Press, at 31. Pavlov discovered that
12 dogs could be classified as to four basic types of temperament which
13 roughly corresponded with the four temperaments the ancient physician
14 Hippocrates identified in man. Each temperament that Pavlov
15 identified bore a relationship to two fundamental responses to the
16 imposition of conflict and stress - aggression and passivity. He
17 found that by passing a weak electrical current through the leg of a
18 dog, or by causing a metronome to beat at a certain particular rate
19 at the same time the dog was fed, he could condition the dog to
20 reflexively respond (which was manifested by the secretion of saliva)
21 to the stimulus as a signal it was going to be fed shortly
22 thereafter. A dog could be conditioned positively, and negatively as
23 well. He found that such conditioned reflexes were a function of the
24 brain because when the dog's brain cortex was removed, it would
25 swallow when food was placed in its mouth, but would not respond to
26 the stimulus to which it had previously been conditioned. He
27 discovered that he could create stress in a dog by increasing the
28 voltage of the electric current applied to its leg, by prolonging the

1 period between the food signal and the delivery of the food, and by
2 giving positive and negative signals one after the other. When the
3 stress applied became too great for the dog, it would begin to break
4 down and manifest peculiar, abnormal behavior. The behavior that
5 would occur, as well as the amount of stress required to produce it,
6 were contingent upon the temperament of the particular dog to which
7 the experiment pertained. The most passive dog would start to break
8 down almost right away. Stronger dogs would require greater stress,
9 but after they were broken down, they were harder to sedate. The
10 difference in temperaments was so great that to sedate a dog of the
11 strongest temperament which had been broken down required a dose of
12 sedative 5 to 8 times greater than that required for the dog of the
13 weakest temperament of exactly the same body weight.

14 In the course of his experiments concerning conditioned reflexes
15 and the imposition of stress, Pavlov found that the breakdowns that
16 occurred were located in the brain. In order to protect itself from
17 damage due to nervous stress, the brain would go into inhibition, or
18 break down. Depending upon the temperament of the dog, and on the
19 amount of stress applied, Pavlov discovered he could elicit dramatic
20 changes in canine behavior. In the initial phase of protective brain
21 inhibition, the dog would refuse to eat. In the most advanced phase
22 of protective inhibition, the positive conditioned responses would
23 suddenly switch to negative ones; and the negative ones to positive.
24 The dog might then attach itself to a laboratory attendant whom it
25 had formerly disliked, and try to attack the master it had previously
26 loved. Sometimes the dogs would go into hypnotic states. The changes
27 in the level of brain inhibition could be measured with some
28 precision by the amounts of saliva secreted in response to

1 conditioned food stimuli. Always, the ability of a dog to resist
2 heavy stress would fluctuate according to the state of its nervous
3 system and general health.

4 Toward the end of his life, Pavlov started to apply his
5 discoveries about dogs to research in human psychology. Id. at 31-42.
6 Pavlov's experiments on dogs have been suggested to be analogous to
7 human behavior. When the brain breaks down under stress, the
8 resultant behavior changes depend upon the individual's inherited
9 temperament and on the conditioned behavior patterns he has built up
10 in gradual adaptation to the environment, in both man and animal. Id.
11 at 92.

12 Although there are those who would disagree, others have stated
13 that it is accepted "by Soviet theorists that just as animals can be
14 trained and conditioned, so can man" and that "human speech is a
15 conditioned reflex activity." Pavlov spoke of "stimuli of the first
16 order, which condition man directly, and stimuli of the second order,
17 with weaker and more complicated conditioning qualities." In the so-
18 called "second signal system" verbal cues replace physical stimuli.
19 Speech belongs to the second signal system wherein first the tone and
20 the sound have a conditioning quality, and later the symbolic and
21 semantic meaning. Meerloo, Pavlovian Strategy As A Weapon of
22 Menticide (1954) 110 American Journal of Psychiatry 809-810,

23 "Pavlov had discovered that, more than in animals, man's
24 relation to the external world is dominated by secondary
25 stimuli, the internalized speech symbols. Man learns to think in
26 the speech figures given to him . . . 'Language is the means of
27 man's adaptation to the environment.' . . . 'Speech
28 manifestations represent conditioned reflex functions of the

1 human brain.' . . . man . . . is conditioned to catchwords,
2 verbal stereotypes, slogans, formulas and symbols. Pavlovian
3 strategy means imprinting prescribed reflexes on a mind that has
4 been broken down . . . The system starts with verbal
5 conditioning and training by combining the required stereotypes
6 with negative or positive stimuli such as pain, hunger or a
7 reward. The range of negative stimuli consists of "physical
8 pressure, moral pressure, fatigue, hunger, . . . boring
9 repetition, confusion created by seemingly logical syllogisms.
10 And when the victim asks for logical sense or personal
11 understanding and reacts with intelligent protest he has to be
12 broken down systematically. He is told that he is betrayed . .
13 . nobody is there any more to help him . . . He is alone and
14 helpless. Guilt and fear are provoked alternately, and he
15 receives rewards when he speaks and acts the right way. . . This
16 kind of Pavlovian strategy arouses in everybody a confusion . .
17 . a general feeling of unreality. It leads gradually to complete
18 mental submission and willingness to play any role."

19 Id. at 810.

20 Such a strategy "destroys free thought and makes servile,
21 mechanical instruments of [an individual's] thought processes."
22 Meerloo, The Crime of Menticide (1951) 107 American Journal of
23 Psychiatry 594, 595. There is a school of thought among those who
24 have studied the methods that can be used to control human behavior,
25 particularly the method developed by the Chinese. This school regards
26 man as "a social animal" whose "health is as much dependent upon
27 satisfactory relationships with his associates as it is upon his food
28 and drink." It asserts the existence of a "sort of psychological

1 modus vivendi leading to a degree of acceptance that is necessary for
2 any man who exists in a group of other men" which, if absent, will
3 result in "profound disturbance." Communist Interrogation And
4 Indoctrination, at 159. The individual man can be considered "as a
5 living system entirely dependent upon maintaining a satisfactory
6 relationship with his total environment." In order maintain a
7 relationship with the environment that feels satisfactory, he needs
8 the acceptance of other people. Otherwise, he will feel that
9 something is wrong with his environment. When he feels that there is
10 something wrong with his environment, within him unpleasant feelings
11 arise, "which stimulate him to take whatever action is necessary to
12 bring them to an end." Id. at 169-170. The "social ecology"
13 surrounding a person can be manipulated so as to become an "assault
14 on the self" of a targeted individual. Sarbin and Adler, Self-
15 Reconstruction Processes: A Preliminary Report (1970) 57
16 Psychoanalytic Review, 608.

17 The methods of interrogation and indoctrination that were used
18 in Communist China in the 1950s were in many respects similar to
19 those of the Russian state police, from which they were in part
20 derived. However, in some respects they were different because of the
21 special needs and traditions of the Chinese. Communist Interrogation
22 and Indoctrination at 173; Hinkle and Wolfe, The Methods of
23 Interrogation and Indoctrination Used By The Communist State Police
24 (1957) 33 New York Academy of Medicine 600, 602 (hereinafter "Methods
25 of Interrogation and Indoctrination.")

26 The Chinese Communist form of the strategy was more closely
27 related to psychotherapy than its Russian counterpart. "In
28 particular, it relies less on physical torture than on psychological

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1 pressures, especially the manipulation of group forces . . ."
2 Persuasion and Healing at 90. In the "revolutionary colleges" through
3 which the Chinese intellectuals were processed, force simply was not
4 used

5 "It would be a mistake to think of the thought reform of the
6 intellectuals as similar to the brainwashing of prisoners. The
7 confessions of prisoners or political offenders have been
8 exacted by physical as well as mental torture. No physical
9 torture was ever used in the thought reform of the
10 intellectuals."

11 (emphasis added) Thought Reform of the Chinese Intellectuals at 71.

12 In the setting surrounding the Chinese intellectuals, there was
13 a complete lack of privacy, an unremitting routine of self-criticism
14 sessions, group-discussion sessions, rote learning, constant
15 repetition of Communist viewpoints and the repeated rewriting and
16 rejection of autobiographical essays. The group exploited the feeling
17 of emotional nakedness and unworthiness which the self-criticism
18 sessions produced. The group focused upon items obtained from the
19 individual's life history which caused feelings of guilt, conflict
20 and anxiety to arise in him. These feelings were magnified when the
21 group rejected, isolated and reviled him because of his "improper"
22 attitudes and past behavior. He was placed in a situation in which he
23 could not avoid having his past life reviewed and questioned and
24 could not avoid hearing an exposition on the Communist position. The
25 group rewarded and approved the individual when he was cooperative
26 and behaved in accordance with their aims, and in that way indicated
27 to him that the only possible solution to an intolerable situation
28 was to accept the "proper" point of view. Communist Interrogation and

1 Indoctrination at 173-174.

2 The story of the Chinese intellectuals who underwent
3 indoctrination at a "revolutionary college" is particularly pertinent
4 in that, as mentioned, "they were not subjected to the physical
5 hardships that tend[ed] to obscure the psychological features of the
6 process" Persuasion and Healing at 90. (emphasis added)
7 Moreover, since "[I]nflicting pain is not a necessary nor
8 particularly effective method of inducing compliance" Biderman,
9 Communist Attempts To Elicit False Confessions From Air Force
10 Prisoners Of War (1957) 33 New York Academy of Science 616, 618,
11 the procedures were developed as a means to ensure that certain
12 people, as well as at one point in history practically the entire
13 population of mainland China, would be reliably obedient.

14 The processes involved can be grouped according to three
15 interrelated aspects -- extreme emotional arousal, total milieu
16 control, and the interrogation. The methods "attempted to produce an
17 intense, disorganizing emotional state in their subjects, to cut them
18 off as completely as possible from all social supports of their
19 previous world view, and to immerse them in a social milieu that
20 consistently and uniformly represented the Communist one." Persuasion
21 and Healing at 91.

22 The revolutionary college drew its student body from among
23 former Nationalist officials and teachers under the old regime, from
24 Communist Party members who had displayed "errors" in their thinking
25 or activities or who had spent lengthy periods of time in Nationalist
26 territory, from student returning from studies in Western countries,
27 and from arbitrarily selected groups of university instructors or
28 recent graduates. Members of these groups apparently matriculated in

1 response to strong "suggestions" or thinly veiled threats that they
2 attend. However, others actively sought admission on a voluntary
3 basis in order to meet the survival requirements of the new regime,
4 or at least learn what was expected of them in the future.
5 Brownfield, C.A., The Mind Benders: A Study Of The Effects Of
6 Isolation (1972) New York: Exposition Press, p. 39, hereinafter The
7 Mind Benders.

8 The colleges were rigidly organized. A single institution which
9 could accommodate up to 4000 students, was subdivided
10 administratively into sections of 1,000 each, then further into
11 classes of 100 to 200, and ultimately into six-to-ten man discussion
12 groups. Id.

13 "Thought reform must be carried out through thought struggle.
14 Anyone who is willing to learn . . . must be prepared for a
15 strenuous struggle between his new and old ideologies. The old
16 things in this world cannot be expected to die of themselves,
17 they fall only under the struggle and the blows of the new. . .
18 . It would be difficult for them to change without the criticism
19 and encouragement of people close to them and without an
20 ideological inner-struggle of their own. Therefore, the study of
21 Marxism-Leninism should be considered as revolutionary work in
22 the realm of thought and a battle assignment in the realm of
23 thought. In order to complete this revolutionary task and
24 fulfill this ideological war, the skilful use of the most
25 important weapons - criticism and self-criticism - is of
26 impelling necessity."

27 Thought Reform of the Chinese Intellectuals at 73.

28 The broad objective of the program was the "liquidation of non-

1 Marxist and anti-Marxist ideas and the dissolutions of anti-Communist
2 attitudes. Id. The individual was expected to "wage a relentless
3 struggle against his own past and set patterns of thought. He must
4 virtually destroy himself for a new self to be born. The ideological
5 conversion comes after the individual has been brought to see how
6 unworthy [is] his past and how necessary [is] a new life, with a new
7 outlook and a new 'standpoint.'" Id. at 74. An additional and more
8 important reason for the Communist insistence on ideological
9 correctness was because the "Communist revolution was a 'total
10 revolution', which aimed to bring about radical changes in the entire
11 social structure and in the pattern of human behavior. It set out to
12 replace the old way of life with a new 'working style', and to
13 substitute new allegiances for old loyalties, and to introduce a new
14 code of personal and social ethics." The most important dimension to
15 the overall Communist reform that was implemented was "ideological
16 reform." Id. at 9.

17 The central theme of the implementation of thought reform
18 indicated it to be "as a physically nonviolent but coercive set of
19 psychological manipulations put in the framework of a morally right,
20 uplifting and therapeutic experience." The Mind Benders at 41. The
21 result was "made possible by isolating individuals from the supports
22 and rewards of their previous milieu and then exerting group
23 pressures upon them to adopt new, socially reinforced substitute
24 norms." (emphasis added) Id.

25 The students who entered these schools were isolated from the
26 rest of society. They were put through an unremitting program of
27 study and physical work, which occupied every moment of their waking
28 hours and left them with no time for reflection. Old methods of

1 thought, behavior and value systems were devalued in conjunction with
2 the use of self-criticism and group-criticism techniques accompanied
3 by exhaustive lectures on Communism. The emotional fervor of the
4 group was kept at a high pitch by the stimulation of intense
5 competitiveness and the organization of "moves" and "drives" from
6 which no student could shrink because of group pressure. Communist
7 Interrogation and Indoctrination at 167.

8 The most effective indirect compulsion has been found to come
9 from group pressure. The group is the "medium through which the
10 Communist Party or the state controls the people; though the control
11 is sure and firm, it is nevertheless indirect; and the Party can
12 claim that the individual submits to the majority of his group and
13 the procedure is 'democratic.'" (emphasis added) Thought Reform of
14 the Chinese Intellectuals at 75.

15 Each student was a member of a group the members of which
16 studied, ate and lived together. Group pressure was brought to bear
17 on the individual. The students challenged one another in the spirit
18 of criticism and self-criticism so that each might learn "to use
19 political theoretical study as a weapon for analyzing and criticizing
20 his own thought." Id. at 19. Leaders of the group "set examples of
21 ideological conversion or 'revolutionary action' and endeavor[ed] to
22 create an atmosphere in which the lukewarm or indifferent members
23 feel the heat to move with the group." Id. at 75.

24 The mass meetings and rallies aroused the emotions and set the
25 stage for thought reform, but the real job of "soul searching", of
26 "examining" one's own background and one's own thoughts was done in
27 small groups. In such small groups

28 ". . . the 'positive elements' 'help' each individual to see his

1 past errors, to muster 'courage' to confess before his comrades,
2 and to declare his determination to mend his ways. In this
3 process of 'free' discussion in small groups, day in and day
4 out, the individuals are caught off their guard and are led to
5 reveal their inner thoughts. It is extremely difficult not to do
6 so in the long sessions which continue until everyone comes to
7 speak his mind. The Communists do not accept neutrality or
8 indifference, and refusal to speak is considered a hostile act.
9 If there is no 'freedom of silence' in Communist China there is
10 compulsory 'freedom of speech' from which none are exempted."

- 11 (emphasis added) Id. at 76.

12 The purpose of criticism ⁹ in discussion groups was of crucial
13 importance: (1) it immediately discouraged any tendency toward
14 unorthodox or nonconformist ideas of action; and (2) it served to
15 point out the insincere, "false progressives," i.e., the students who
16 on the surface expressed entirely "correct" and conforming views but
17 who lacked true conviction. Members of the group looked for
18 indications of lack of real emotional involvement in others, each
19 feeling the need to prove the reality of his own reform by making a
20 public show of personal enthusiasm and actively participating in the
21

22 ⁹. The 'small group' usually consists of no more than ten or
23 fifteen persons, and is further subdivided into 'mutual aid study
24 groups' of three or four persons each. It may be engaged in the study
25 of Marxist theories or in the discussion of current events or in the
26 examination of individual 'thought conclusions' growing out of
27 'study.' In each and every instance, every member is given his turn
28 to talk. The group analyses the thought of each person and 'exposes'
29 his errors. This, it is said, is the 'democratic way.' Moreover, it
30 is an expression of 'collective living,' and to refuse to participate
31 is to commit the offence of 'alienating one's self from the group.'
32 In essence, this is the technique of criticism and self-criticism.
33 The group criticizes the individual and helps him to criticize
34 himself. Members criticize one another and they criticize
35 themselves." Id. at 77.

1 criticism of others. Moreover, this was an entirely acceptable way of
2 avoiding being criticized for "failure to combine theory with
3 practice."

4 Everyone was made to feel guilty in varying degrees because he
5 had, at least once in the privacy of his own thoughts, rejected one
6 or another of the principles and precepts of communist ideology; the
7 disconcerting part was that such thoughts seemed to show outwardly
8 despite the conscious effort to suppress them. The Mind Benders at
9 40.

10 One was expected to receive the criticisms gratefully and with
11 grace in the spirit that such criticisms were honest efforts on the
12 parts of critics to help correct faulty thinking. The student who was
13 criticized, as a good group member, was expected to anticipate,
14 welcome, and expand on the criticisms, thus establishing the self-
15 criticism process. Extensive, in-depth analyses of one's self in
16 minute detail was required, and this included current thoughts and
17 behavior as well as those of those of the past - every experience
18 pertaining to family, education and intimate inter-personal
19 relationships. Id. at 42.

20 In the context of the discussion groups, there was a certain
21 biasing, or redefinition of the language used therein. Terms like
22 "liberation," "help," "progress," "the people," "proletarian,"
23 "bourgeois," and "capitalistic" became morally charged, both
24 positively and negatively; they assumed a magical quality in and of
25 themselves. It became difficult, using such jargon and loaded
26 concepts, to frame issues or conceive of problems in any way other
27 than the way the Communists conceived of them. Id. In the Group for
28 the Advancement of Psychiatry Reports (1957) R.J. Lifton stated that

1 "catch phrases and semantic manipulation are so prominently developed
2 that the student must find himself thinking and conceptualizing
3 within their sphere."

4 "Using the pattern of words for so long, you are so accustomed
5 to them that you feel chained. If you make a mistake, you make
6 a mistake within the pattern. Although you don't admit that you
7 have adopted this kind of ideology, you are actually using it
8 unconsciously, almost automatically. . . . At that same time I
9 believed in certain aspects of their principles and theories,
10 but such was the state of confusion in my own mind that I
11 couldn't tell or make out what were the things I did believe
12 in."

13 Id. at 246-247.

14 As a natural consequence of self-criticism, the student began to
15 confess within the small group to the "evils" and "transgressions" of
16 their lives. Moral and political values became infused with each
17 other so that thoughts and actions were negatively classified as
18 "reactionary," or positively regarded as "progressive." The Mind
19 Benders at 42-43.

20 With the passage of time, more and more "progressives" and
21 "activists" took an aggressive leadership role. If a group was not
22 progressing along the general plan of the thought reform, or if the
23 group leaders were not doing their jobs well, they were replaced or
24 reshuffled by their superiors. Id. at 43.

25 This insured that every leadership position was occupied by a
26 reliable "progressive."

27 The term "confession" describes "the various forms of personal
28 testimonies which the intellectuals were asked to submit as evidence

1 of their reform progress." Thought Reform of the Chinese
2 Intellectuals at 59. It is an autobiographical document and in order
3 to be acceptable, was required be complete, having no gaps which left
4 a part of the past concealed. Not to be a mere chronicle, it had to
5 reveal the individual's personal reactions to his past and each
6 important episode of his life. Id. It was required to contain a
7 definite pledge to make "clean break from the unsavory past, with a
8 determined effort to 'study' Marxism-Leninism and the ideology of the
9 proletariat revolution. It must promise a new start in life, a fresh
10 resolution to take part on the 'people's revolution' under the
11 guidance of the Communist Party." Id. at 60.

12 The focal point of the indoctrination process was the
13 interrogation, which had individual and group forms.

14 "The general strategy of both was to obtain as much information
15 . . . as possible, including the apparently innocuous and
16 irrelevant, and use it to undermine his own assumptive world and
17 prevail upon him to adopt the Communist one. . . Since wrong
18 thoughts as well as wrong deeds were crimes, the confession
19 included . . . [all] attitudes and motives and their sources .
20 . . All of this had to be expressed in such a way as to
21 demonstrate his complete and unqualified acceptance of the
22 Communist world view." (emphasis added)

23 Id. at 96.

24 The confessions were used to foster public sentiment so as to
25 encourage other intellectuals "to follow the same path of ideological
26 conversion." Id. at 60-61. Since the Communists want a collective
27 society, they preach collective living. The individual must submit to
28 the group, and obey the organization. Consequently, a specific target

1 of the thought reform was the individualism of the intellectuals.
2 Personal needs and personal interests should be subordinate to the
3 needs of the state and the "people." Id. at 66-67.

4 The strategy of indoctrination forced
5 "the person to participate actively in bringing about his own
6 change of attitude . . . each group member had to demonstrate
7 the genuineness of his reform through continuous personal
8 enthusiasm and active participation in the criticism of his
9 fellow students . . . The Chinese apparently believed that if
10 they could get a man to participate . . . eventually he would
11 accept the attitudes which the participation
12 expressed." (emphasis added)

13 Persuasion and Healing. (internal citations omitted) at 99.

14 The material to be inculcated in the strategy of thought reform
15 was repeated over and over again. "Most of the techniques used gained
16 their effectiveness by being used in this repetitive way until the
17 prisoner could no longer sustain his resistance." Id. (internal
18 citation omitted) at 100. With regard to the intellectuals, it was
19 said again and again that unless they 'remake' themselves they will
20 not be of any use to the new society." Thought Reform of the Chinese
21 Intellectuals at 79. "If the confessions shatter the self-esteem of
22 the intellectuals, it is a necessary step in their ideological
23 conversion."

24 "Individualism is a central target of attack. The new way of
25 life is the collective life. The methods of thought reform
26 utilize group pressure. To the group the individual bares his
27 thoughts in self-criticism and confessions. He must tell all
28 without any reservation. He must not have nay secrets. Inasmuch

1 as the 'group' is always directed by capable manipulators and
2 the acme of group life or collective life is the Party or the
3 state, the replacement of individualism by collectivism means in
4 the last analysis the total surrender of the individual to the
5 Party or the state. Once this has been accomplished, thought
6 reform will have been complete."

7 (emphasis added) Id.

8 ". . . Communism requires a person to give up his all to
9 serve the proletarian-socialist revolution and recognizes
10 no middle course, no neutral position; one is either an
11 active supporter or an enemy. Its 'ideological remolding'
12 demands a complete break with the past and a new start. The
13 emotions of self-degradation and disgust pave the way to
14 self-destruction and rebirth as a 'new person.'

15 (emphasis added) Id. at 188.

16 In the process of becoming such a 'new person' "freedom of
17 thought" is destroyed, Id. at 191, because, as often stated, thought
18 reform's "real objective is always the complete surrender of the
19 individual to the Party and the state." Id. at 194. "Under the
20 ceaseless pressure for more 'study' and more 'self-examination' no
21 peace of mind is left to anyone." Id. at 195.

22 The use of language became burdened with the "double-talk" of
23 the Communists. "They talk democracy but practice dictatorship; they
24 stress voluntarism and exercise compulsion; and they preach freedom
25 while they exercise rigid control. Theirs is the double-talk of the
26 democratic dictatorship, the people's democratic state, and freedom
27 of speech in a people's democracy." Id. at 201.

28 Under the relentless pressure of hard work, fatigue, increasing

1 demands, groups pressures, criticisms, doubts and ridicule, the
2 majority of students ultimately reached a point at which they went
3 through an emotional crisis associated with tears and depression.
4 Most found themselves able to make the necessary adaptation by
5 reorienting their value systems and identifying themselves with the
6 Communist group. A religious fervor and a feeling of "conversion"
7 frequently accompanied this emotional breakdown and recovery. His new
8 Communist fervor and group identification continued as long as the
9 student remained an active member of his class group. Communist
10 Interrogation and Indoctrination at 167.

11 Through the techniques described above, the Chinese
12 revolutionary colleges perfected the techniques of gaining access to
13 the inner self of the student, primarily through the discussion
14 group, and manipulating that access through total control of the
15 environment surrounding the student. The manipulated interplay
16 between the inner man and the outer environment had the effect of a
17 bellows exerting pressure to heat the fire of inner conflict in the
18 student.

19 "Prolonged misery, frustration and uncertainty tended to dull .
20 . . critical faculties and weaken their capacity to withstand
21 the continual and ubiquitous pressures to adopt the Communist
22 world-view. The Chinese immersed the . . . student completely
23 in an 'airtight communication system' characterized by a highly
24 charged morality and an absolute doctrinal authority for the
25 'correctness' of any solution or point of view."

26 Lifton, R.J., Thought Reform of Chinese Intellectuals: A Psychiatric
27 Evaluation (1957) 13 Journal of Social Issues 5, 14. It permitted
28 him to receive or send communications only in terms of this system.

1 "Input" from the outer world was severely reduced and systematically
2 manipulated to weaken his ties with his former groups. Communist
3 literature was the only available reading matter. . . All incoming
4 and outgoing mail was read, and only those communications allowed to
5 pass in either direction that would estrange [him] from his loved
6 ones or worry him about them.

7 "The Communists also attempted to make all the . . . students'
8 'output' conform to their world view. Communications that
9 indicated acceptance of the Communist position were rewarded,
10 while all others were rejected. Prolonged, severe conflict
11 between inner beliefs and outer behavior is hard to stand, so
12 the enforcement of behavioral conformity tends to eventually
13 bring about changes in one's belief system to harmonize with it.

14 Measures were designed to prevent the formation of
15 ties among prisoners that would strengthen their ability to
16 resist. (emphasis added)

17 Persuasion and Healing at 94.

18 When Americans who had been held by the Chinese returned to this
19 Country, many spent time in a hospital ward. Their behavior
20 contrasted starkly with other American soldiers. Their behavior was
21 startling testimony to the effectiveness of the Chinese isolation
22 procedures.

23 "Most of the ex-prisoners stayed on the wards - less than 5%
24 asked for passes to go to town, and those who did go went alone.
25 They formed no groups, did not play cards and stayed as much by
26 themselves as they could. But they talked compulsively and
27 incessantly to the treatment personnel and seemed unable to
28 evaluate whether the things they said about each other might be

1 harmful or not.

2 The clinical impression of apathy and personal isolation in
3 most of the prisoners was borne out by their performance on
4 psychological tests. The outstanding characteristic of the
5 stories they made up to explain neutral pictures that they were
6 shown was the rarity of interaction and feeling. Their
7 interpretations of ink blots, which often reveal hidden
8 attitudes and feelings, were described as showing varying
9 degrees of apathy coupled with strong pent-up aggressive-
10 destructive feelings."

11 (emphasis added) Singer, M.T., & Schein, E.H., Projections Test
12 Responses of Prisoners of War Following Repatriation (1958) 21
13 Psychiatry 375.

14 In short, the Chinese "evolved a means of isolating every person
15 emotionally from every other person, permitting each to turn only to
16 the system for guidance and friendship." Persuasion and Healing, at
17 95.

18 However successful was thought reform in producing false
19 confessions, "its ability to produce sustained attitudinal change
20 seemed to be very small unless the new attitude was constantly
21 reinforced by the group . . . Even the extreme pressures of thought
22 reform seem unable to produce long-lasting changes unless they are
23 sustained by subsequent group support." Id. at 101-102. ^{10/}

24 Applying the foregoing discussion to the facts of the Aznarans'
25 personal experience in Scientology as set forth in Plaintiffs'
26 Appendix of Fact in Opposition to Motions for Summary Judgment, it is

27 _____
28 ¹⁰ See also, Lifton, Thought Reform and the Psychology of
Totalism, (Norton, 1963), Chapter 22 at 419-37, Schein, Coercive
Persuasion (Norton, 1971) 117-67.

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1 clear that what Scientology practiced on the Aznarans was coercive
2 persuasion. It is clear that based upon the foregoing that there is
3 no practical difference between coercive persuasion and undue
4 influence. ^{11/} Based upon the foregoing, it is also clear that

5
6 ¹¹ "Undue influence, . . . , is a shorthand legal phrase used
7 to describe persuasion which tends to be coercive in nature,
8 persuasion which overcomes the will without convincing the judgement.
9 [citation.] The hallmark of such persuasion is a high pressure, a
10 pressure which works on the mental, moral or emotional weakness to
11 such an extent that it approaches the boundaries of coercion. In this
12 sense undue influence has been called overpersuasion. [citation.]
13 Misrepresentations . . . of fact are not essential to the charge, for
14 a person's will may be overborne without misrepresentation. . . .
15 While most reported cases of undue influence involve persons who bear
16 a confidential relationship to another, a confidential or
17 authoritative relationship between the parties need not be present
18 when the undue influence involves unfair advantage taken of another's
19 weakness or distress. [citations.] [¶] . . . To make a good contract
20 a man must be a free agent. Pressure of whatever sort which overcomes
21 the will without convincing the judgement is a species of restraint
22 under which no valid [decision] can be made. Importunity or threats,
23 if carried to the degree in which the free play of a man's will is
24 overborne, constitute undue influence, although no force is used or
25 threatened. A Party may be led but not driven, and his acts must be
26 the offspring of his own volition and not the record of someone
27 else's. [¶] In essence undue influence involves the use of excessive
28 pressure to persuade one vulnerable to such pressure, pressure
29 applied by a dominant subject to a servient object. In combination
30 the elements of undue susceptibility in the servient person and the
31 excessive pressure by the dominating person make the latter's
32 influence undue, for it results in the apparent will of the servient
33 person being in fact the will of the dominant person...

34 "Whether from weakness on one side, or strength on the other, or a
35 combination of the two, undue influence occurs whenever there results
36 'that kind of influence or supremacy of one mind over another by
37 which that other is prevented from acting according to his own wish
38 or judgement, and whereby the will of the person is overborne and he
39 is induced to do or forebear to do an act which he would not do, or
40 would do, if left to act freely. (Webb v. Saunders, 79 Cal.App.2d
41 863, 871.)" (emphasis added) Odorizzi v. Bloomfield School District
42 (1966) 246 Cal.App.2d 123, 130-132. Direct evidence of undue
43 influence "is rarely obtainable and, thus the court is normally
44 relegated to determination by inference from the totality of facts
45 and circumstances. . . . Indeed, there are no fixed definitions or
46 inflexible formulas. Rather, we are concerned with whether from the
47 entire context it appear that one's will was overborne and he was
48 induced to do or forebear to do an act which he would not do, or
49 would do, if left to act freely." (emphasis added) Keithley v. Civil
50 Service Board (1970) 11 Cal.App.3d 443, 451.

(continued...)

1 force, or threat of force, is not necessary for the implementation of
2 a thought reform program, even though such force and threats are
3 present in the case at bar.

4 IV. MARGARET SINGER'S WORK ON THOUGHT REFORM
5 HAS NOT BEEN REJECTED BY HER PEERS.

6 Scientology makes the misleading claim that Dr. "Singer's work
7 not only lacks acceptance, but has been resoundingly rejected by her
8 peers." (Defendants' Motion at 7.) This statement is flatly
9 incorrect. As revealed by the American Psychological Association's
10 sworn answers to written interrogatories, the following is correct:

- 11 1. The A.P.A. holds no position, one way or the other, whether or
12 not the expert testimony on "coercive persuasion" in Molko
13 should or should not have been admitted into evidence.
- 14 2. The A.P.A. holds no position, one way or the other, with respect
15 to whether the methodologies employed by plaintiffs' experts in
16 Molko have been repudiated or not by the scientific community
17 due to the use of "undocumented and biased sources."
- 18 3. The A.P.A. holds no position, one way or the other, with respect
19 to whether the methodologies employed by the plaintiffs' experts

20 _____
21 ¹¹(...continued)

22 As a general rule, overpersuasion can be identified by certain
23 characteristics which tend to create a pattern. The general
24 characteristics include the following elements, not all of which need
25 be in effect in order for overpersuasion to be present.

- 26 "(1) discussion of the transaction at an unusual or
27 inappropriate time,
28 (2) consummation of the transaction in an unusual place,
29 (3) insistent demand that the business be finished at once,
30 (4) extreme emphasis on untoward consequences of delay,
31 (5) the use of multiple persuaders by the dominant side against
32 a single servient party,
33 (6) absence of third-party advisers to the servient party, . . ."

34 Odorizzi, 246 Cal.App.2d at 132-133. The undue susceptibility to such
35 overpersuasive influence may be the product of physical or emotional
36 exhaustion or anguish which results in one's inability to act with
37 unencumbered volition. Keithley, 11 Cal.App.3d at 451.

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1 in Molko have been repudiated by the scientific community
2 because those methodologies failed to show causal links between
3 membership in the defendant organization and observed
4 psychological harm.

5 4. The A.P.A. holds no position, one way or the other, as to
6 whether the conclusions of the plaintiffs' expert in Molko are
7 generally recognized as scientific conclusions in the relevant
8 professional communities.

9 5. The A.P.A. holds no position, one way or the other, as to
10 whether plaintiffs' theory of coercive persuasion offered in
11 Molko, if applied by the courts, would infringe upon First
12 Amendment guarantees.

13 6. The A.P.A. does not know whether or not the views expressed in
14 the amicus curiae brief filed on behalf of defendants in Molko
15 in the California Supreme Court contains views which are shared
16 by a majority of the membership of the American Psychological
17 Association.

18 7. The A.P.A.'s "BSERP concluded that sufficient information was
19 not available to permit BSERP to endorse the theory of 'coercive
20 persuasion' set forth in the [task force] report."

21 Plaintiffs' Exhibit C, Ruehle v. Lifesping, Inc., United States
22 District Court for the Southern District of New York, Deposition Upon
23 Written Questions propounded to The American Psychological
24 Association. Thus, while Dr. Singer may not as of yet have enjoyed
25 the endorsement of the A.P.A., her work on coercive persuasion has
26 not been rejected either. ^{12/}

27 _____
28 ¹² The theory of coercive persuasion enjoys greater acceptance
than defendants are willing to recognize. In the DMS-II-R, the
(continued...)

1 It is curious that the Fishman court would rely upon a
2 professional association in order to determine whether or not
3 something was generally accepted in a particular professional
4 community. Few lawyers would agree that the American or California
5 Bars set the standard of what is the acceptable practice of law. It
6 would seem that when the Fishman court deferred to what it
7 incorrectly understood to be the position of the A.P.A. on the
8 subject of coercive persuasion, it not only assumed a definiteness
9 that did not exist, it was incorrect as well. See, Gianelli, "The
10 Admissibility of Novel Scientific Evidence: Frye v. United States, a
11 Half-Century Later," 80 Columbia Law Review 1197, 1210-11. ^{13/}

12 It may be that Margaret Singer is not biased, but precisely
13 accurate. If so, there is good reason for Scientology to want to
14 exclude her testimony. If not, the matter goes to the weight of her
15 opinions, not to their admissibility. In any event, her testimony
16 will not violate the First Amendment. See, Plaintiffs' Opposition to
17 Defendants' Motion for Summary Judgment [First Amendment].

18 In light of the law as it is set forth in Molko, Wollersheim and
19 Bible Speaks, it is clear that the probabtive value of Dr. Singer's

20
21 ¹²(...continued)
22 guidebook of the community of mental health professionals, § 300.15
23 at 277, states that a Dissociative Disorder Not Otherwise Specified
24 may include "(5) dissociated states that may occur in people who have
25 been subjected to periods of prolonged and intense coercive
26 persuasion (e.g., brainwashing, thought reform, or indoctrination
27 while the captive of terrorists or cultists)." Plaintiffs' Exhibit
28 D. See also, The Merck Manual of Diagnosis and Therapy (1987)
Chapter 136, Group Psychodynamics, subsection Cults at 1467-71
(authored by Dr. Singer). Plaintiffs' Exhibit E.

29 ¹³ As to methodology, it would be impossible to ethically
30 conduct an experiment whereby techniques of coercive persuasion were
31 imposed upon a subject without his knowledge or consent. Indeed, to
32 do such a thing would violate federal law. See, 46 Code of Federal
33 Regulations § 46.116 (General requirements for informed consent for
Protection of Human Research Subjects).

1 testimony would far exceed any prejudicial effect that could result
2 therefrom. The prejudice in this case comes from the facts. The
3 facts come from the way that Scientology abused Richard and Vicki
4 Aznaran.


5 Finally, it is ironic that Scientology is seeking to suppress
6 evidence of brainwashing when as long ago as 1955 L. Ron Hubbard
7 stated we "have brain-washing technologies in our hands," Exhibit F,
8 Declaration of Gerald Armstrong re letter from L. Ron Hubbard to
9 Federal Bureau of Investigation dated 9/7/55, and less than one year
10 later boasted "We now know more about psychiatry than the
11 psychiatrists. We can brainwash faster than the Russians (20 secs to
12 total amnesia against three years to slightly confused loyalty." Id.
13 Hubbard Communications Office Technical Bulletin dated 7/22/56.

14 CONCLUSION

15 Based upon the foregoing points, plaintiffs' respectfully submit
16 that defendants' motion to exclude the testimony of Dr. Singer should
17 be denied.

18 DATE: August 26, 1991

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19
20
21 FORD GREENE
Attorney for Plaintiffs

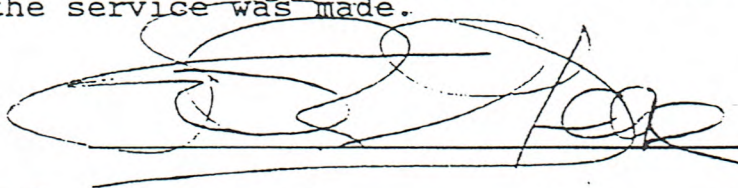
1 PROOF OF SERVICE

2 I am employed in the County of Marin, State of California. I am
3 over the age of eighteen years and am not a party to the above
4 entitled action. My business address is 711 Sir Francis Drake
5 Boulevard, San Anselmo, California. I served the following
6 documents: PLAINTIFFS' OPPOSITION TO MOTION TO EXCLUDE EXPERT
7 TESTIMONY; PROPOSED ORDER

8 on the following person(s) on the date set forth below, by placing a
9 true copy thereof enclosed in a sealed envelope with postage thereon
10 fully prepaid to be placed in the United States Mail at San Anselmo,
11 California: SEE ATTACHED SERVICE LIST

- 12 (By Mail) I caused such envelope with postage thereon
13 fully prepaid to be placed in the United States
Mail at San Anselmo, California.
- 14 (Personal I caused such envelope to be delivered by hand
15 Service) to the offices of the addressee.
- 16 (State) I declare under penalty of perjury under the
17 laws of the State of California that the above
is true and correct.
- 18 (Federal) I declare that I am employed in the office of a
19 member of the bar of this court at whose
20 direction the service was made.

21 DATED: August 26, 1991



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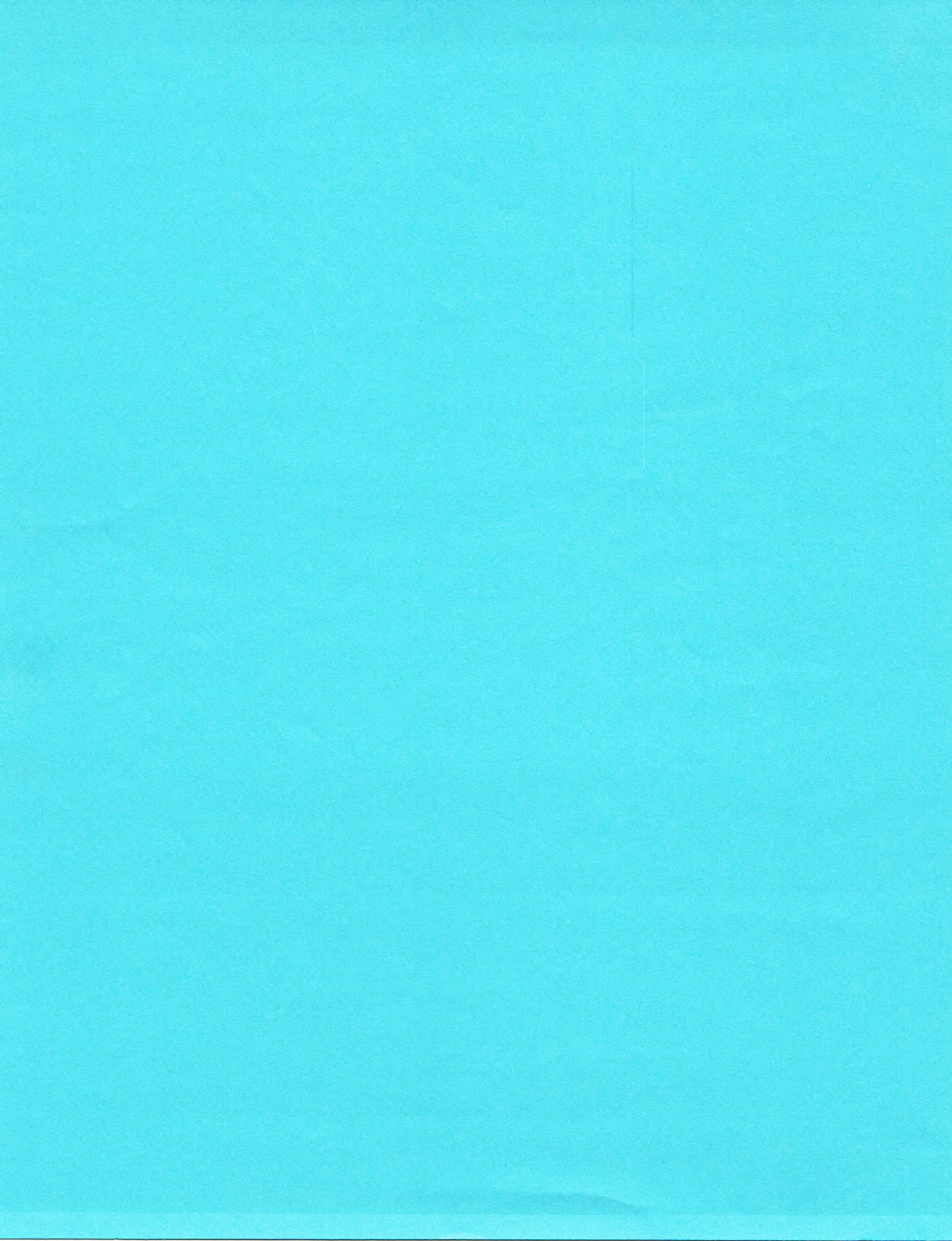
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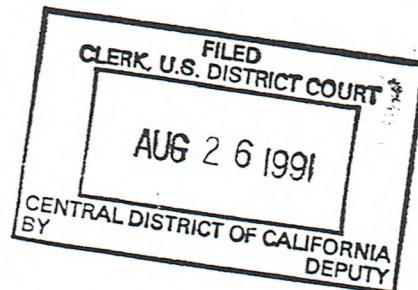
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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 VICKI J. AZNARAN and RICHARD N.)
13 AZNARAN,)
14 Plaintiffs,)
15 vs.)
16 CHURCH OF SCIENTOLOGY OF)
17 CALIFORNIA, et al.,)
18 Defendants.)

No. CV-88-1786-JMI (Ex)

DECLARATION OF FORD GREENE
OPPOSING MOTION TO
EXCLUDE EXPERT TESTIMONY

Date: September 9, 1991
Time: Discretionary
Ct: Hon. James M. Ideman

19 AND RELATED COUNTER CLAIM

20 FORD GREENE declares:

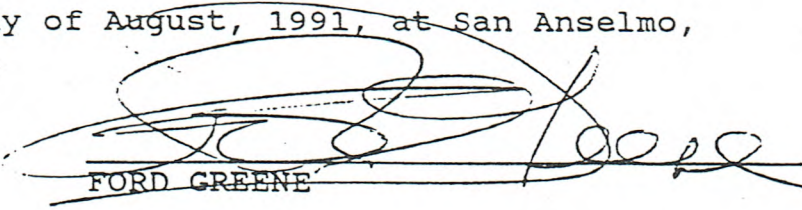
21 1. I am an attorney licensed to practice law in the Courts
22 of the State of California, am admitted to practice in this Court,
23 and am the attorney of record for Vicki J. Aznaran and Richard N,
24 Aznaran, plaintiffs herein.

25 2. I have attached true and correct copies of the following
26 documents as exhibits in opposition to defendants' motion to
27 exclude testimony of plaintiffs' designated expert, Margaret Singer:
28 Exhibit A - Curriculum vitae of Margaret Singer.

- 1 Exhibit B - Order Granting Summary Judgment, filed October
- 2 21, 1983, in Molko v. Holy Spirit Association,
- 3 San Francisco Superior Court No. 769-529.
- 4 Exhibit C - Answers, served May 30, 1990, to Deposition
- 5 Upon Written Questions propounded to The
- 6 American Psychological Association in Ruehle v.
- 7 Lifespring, Inc., United States District Court
- 8 for the Southern District of New York, No. 89
- 9 Civ. 7679 (GLG).
- 10 Exhibit D - Excerpt from the "Diagnostic and Statistical
- 11 Manual of Mental Disorders" (3rd Ed. Revised
- 12 1987).
- 13 Exhibit E - Excerpt from "The Merck Manual of Diagnosis and
- 14 Therapy" (15th Ed. 1987).
- 15 Exhibit F - Declaration of Gerald Armstrong.
- 16 Exhibit F1 - Letter dated September 7, 1955 from L. Ron
- 17 Hubbard to the Federal Bureau of Investigation.
- 18 Exhibit F2 - Hubbard Communications Office Technical
- 19 Bulletin dated July 22, 1956.

20 Under penalty of perjury pursuant to the laws of the United
21 States, I hereby declare that the foregoing is true and correct
22 except as to those matters stated to be on information and belief,
23 and as to those matters, I believe them to be true.

24 Executed this 26th day of August, 1991, at San Anselmo,
25 California.


FORD GREENE

1 HUB LAW OFFICES
2 Ford Greene, Esquire
3 California Bar No. 107601
4 711 Sir Francis Drake Boulevard
5 San Anselmo, California 94960-1949
6 Telephone: (415) 258-0360

7
8 Attorney for Plaintiffs
9 VICKI J. AZNARAN and
10 RICHARD N. AZNARAN

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 VICKI J. AZNARAN and RICHARD N.)
14 AZNARAN,)

15 Plaintiffs,)

16 vs.)

17 CHURCH OF SCIENTOLOGY OF)
18 CALIFORNIA, et al.,)

19 Defendants.)

No. CV-88-1786-JMI (Ex)

DECLARATION OF GERALD
ARMSTRONG IN OPPOSITION
TO MOTION TO EXCLUDE
EXPERT TESTIMONY

20 AND RELATED COUNTER CLAIM)
21)
22)
23)
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26)

27 I, GERALD ARMSTRONG, declare:

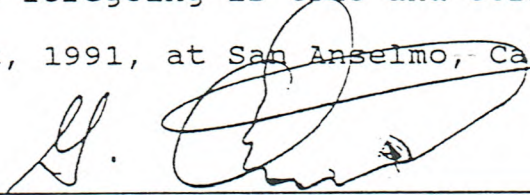
28 1. I was a Scientologist from 1969 to 1981 and held many
29 organizational positions during that period. I was also the
30 defendant in an action entitled Church of Scientology vs.
31 Armstrong, in Los Angeles Superior Court. Judge Breckenridge's
32 opinion in that case was affirmed by the California Court of Appeal
33 on July 29, 1991.

34 2. Throughout 1980 and 1981 I was L. Ron Hubbard's
35 biographical researcher and archivist. During that period I read

1 and studied his letter dated September 7, 1955 to the Federal
2 Bureau of Investigation and I provided a copy of it to writer, Omar
3 V. Garrison for his use in a biography of Hubbard. A true and
4 correct copy thereof is attached hereto as Exhibit 1.

5 3. While I was a Scientologist I read and studied L. Ron
6 Hubbard's Technical Bulletin of July 22, 1956. It was published in
7 the 1970's in bound volumes of Hubbard's "technical" writings and
8 has continued to be published in later volumes up to the present
9 time. A true and correct copy is attached hereto as Exhibit 2.

10 Under penalty of perjury, pursuant to the laws of the United
11 States I hereby declare that the foregoing is true and correct.
12 Executed this 26th day of August, 1991, at San Anselmo, California.

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14 
15 _____
16 GERALD ARMSTRONG
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RON HUBBARD, D.I. PH.

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Box 242
Silver Spring, Md.
Sept. 7, 1955

TO THE FEDERAL BUREAU OF INVESTIGATION
Communist Activities

Gentlemen:

2.1 on 11.1.55

A series of sudden insanities and disturbances in Dianetic and Scientology groups reached seven last week on the West Coast.

In Atomic Energy's Richland, Washington a young boy who had never been treated with Dianetics or Scientology but whose father Verne McAdams is the local Scientology group leader in Richland suddenly and mysteriously became insane, so suddenly and so thoroughly that the head of the institution for insane in Richland, evidently of good security, suspects the use of LSD; the insanity producing drug so favored by the APA. Two of our ministers in that area at my request went further into the situation and by means we will not detail recovered from the boy information of which his family had been entirely ignorant. On instructions to find the "other psychiatrist" our ministers by this means located an unsuspected one in Atomic Energy's front yard, a man who had been the construction company doctor during the building of Richland and who had then turned psychiatrist and whose name strangely enough is Menkowski (sp?). The boy had evidently had some association with this man before this sudden onset.

00-79

With this information not yet cool long distance from San Francisco Bay Area notified us of the sudden and inexplicable descent into insanity of one Wanda Collins. She is ravingly insane and yet was completely sane a day ago. Her people and our people cannot account for a missing nine hour period just before this onset. You should be interested in this because Wanda Collins resigned from the Communist Party some time ago, foreswore it and tried to make amends with Scientology and would be a logical candidate for an LSD attack.

SEE REVERSE SIDE FOR
ADD. DISSEMINATION

RECORDED-1041

Concurrently with this in Phoenix, Arizona

20 SEP 7 1955

58

SEP 20 1955

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our Mr. Edd Clark was suddenly arrested "for practising medicine without a license", and this is very odd because he is the first Dianeticist or Scientologist in five years of world wide operation to be so accused. He could not have been practising medicine because Dianetics and Scientology seek only to assist able people to improve their talents and have no interest in sickness or insanity. He was arrested and without any search warrant all his papers and letters were seized even down to blank typewriter paper and were carried away, a fact which places this matter quite solidly in the field of the F.B.I.. Mr. Clark is a half-blind deaf old man. He was once a chiropractor but has long since ceased to be one. He was told by the County Attorney that the County Attorney meant to "get to the bottom of this thing about Hubbard and Scientology."

The "bottom of the thing" can be found in "Who Knows and What" and "Who's Who in the East" in the local library or from bookstores which carry my books. My own life is about as hard to investigate as a white rock on a summer's day.

It is not uncommon in the past five years to have judges and attorneys mad-dogged at about what a terrible person I am and how foul is Scientology. Persons never named or available step in, spread violent tales and accusations and vanish. This mad-dogging has evidently been done at this County Attorney to prompt such a foolish action. This makes the third civil official in that area to go off half-cocked about Scientology. When it is all done and Scientology has been neatly ruined by the newspapers in the area and when all the charges have been quashed there is no one from whom any recompense can be drawn. "It was all a mistake"...

In 1950 the Dianetics Foundations were violently attacked and discredited. The 200 Foundation employees, when screened, yielded 35 Communist-connected persons. That done the commotion stopped. After three quiet years in the Phoenix area we forwarded to the Defense Department data on brain-washing. Instantly

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(51)

we became the subject of violence. Four people were seized by psychiatrists in that area to date and to this day so far as I know are still being held, their sanity shattered.

After we so informed the Defense Department about brain-washing technologies in our hands and offered them, we have been in a state of siege. Understand that we accuse the D.D. of nothing.

Psychiatrists as far north as Seattle have said they were "out to get every Scientologist." An Internal Revenue official has used those very words before witnesses and said he was going to get to the bottom of this thing in Phoenix. People in suspicious condition were sent from one place in Southern California to be "treated by Scientology" for insanity and yet we have no interest in treating anyone, especially the insane. Now two more people go suddenly and inexplicably insane in widely different places both the same way. All manner of defamatory rumors have been scattered around about me, questioning even my sanity which is fortunately a matter of good record with the Navy as by statement "having no psychotic or neurotic symptoms whatsoever."

I have a wife and three little kids. I have a good many thousand people scattered around the world trying to help their fellow man and I am responsible for these people. I am trying to turn out some monographs on matters in my field of nuclear physics and psychology for submission to the government on the subject of alleviating some of the distress of radiation burns, a project I came east to complete. This lawless and brutal attack on Scientology now spreading evidently to three states will probably not end until a great deal of injustice and human suffering has occurred.

Would you please discover for me or for yourselves the exact names and whereabouts of the persons whose statements inflamed the County Attorney in Phoenix in arresting a half-blind old man and seizing all his books and papers. If we have those names and if we trace them back we will have someplace to start on this madness


(13)

RON HUBBARD, D.D. PH.D.

which now reaches into three states. Can you do this for us?

I am getting additional copies of the material which was offered to the Defense Department since that agency has not acknowledged or returned anything shipped to it about brain-washing and when I have these copies I will send one to you for this is the only starting place I know about for this outbreak and the matter, while far from conclusive at least tells me that something went astray which was dangerous in the wrong hands.

Could you please have your Phoenix office obtain the names of the people who defamed us to the County Attorney? Your Bay Area and Richland offices have already been apprised of the incidents in those areas.


L. Ron Hubbard

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HUBBARD COMMUNICATIONS OFFICE
217a Kensington High Street, London W.8

R U S H

July 22nd, 1956

To U.S. ONLY Julia Lewis, Dick Steves, L. Ron Hubbard, Jr.

To England ONLY Association Secretary (Jack Parkhouse)
Director of Processing (Ann Walker)
Director of Training (Dennis Stephens)

Staff Auditors, Instructors and Auditors close to Operation only.

TECHNICAL BULLETIN OF 22 JULY 1956

I feel the urge to communicate to you the best news since 1950.

I have whipped the problems of the whole track and memory of the past and can resolve the worst cases we have ever had. That is a huge statement *but* I have solved and can untangle in an intensive the problems of the vacuum and havingness plus memory and health and have just done so. Hence the exuberance.

Also, other auditors can solve these in a case as well. NIBS has just cracked two six-year-standing Black Fives using some of this material and Herbie Parkhouse has had considerable luck with solids.

We are now capable of solving Book One style cases to the extreme level of clear.

No wild burst of enthusiasm is here intended. I have to put the finishing touches on a lot of things and the process is still slow—25 to 75 hours. But I've now done it and seen it done to worse cases than any you've had. And that's fact!

Okay. It's not simple. It requires a minute understanding of Book One. It would take me 50 pages to explain all I've lately found about vacuums. You haven't seen the last of me or of study, but you will have seen the last of unsuccessful cases providing only that we have time and environment in which to audit them.

We can make homo novis. (AND give a grin to those who kept standing around bleating, "Where are the clears?")

We know more about life now than life does—for a fact, since *it* was reaching, we can communicate about the reactions.

The process is concerned with "making it solid" combined with effects. It isn't easy. It is wonderfully complex and delicate. But it *has* been done. And it is being done.

Our cases gained but sometimes slumped. Why? Because an electronic vacuum restimulated on the track after sessions, and robbed the case's havingness.

A vacuum isn't a hole. It's a collapsed bank. Every lifetime bank is collapsed into a vacuum.

The formula is—

1. Run pc on start-change and stop for *hours* until he is under auditor's control, in session and (often) exteriorized.
2. Then run him with commands "What are you looking at?" "Good." "Make it solid."

He will eventually hit a vacuum. (He'd hit it faster on "Recall a can't have" but it's too fast.) Here's the tangle. The vacuum is a super-cold mass or an electric shock. This "drank up" bank electronically (brainwashed him). The energy drunk turned black. Hence black cases. (Does not apply only to black cases however.)

3. Run, interspersed with solids and "objective can't have" on the room. "Tell me an effect object (that drank bank) could *not* have on you," and "Tell me an effect you could have on object." Object may be electrodes or supercold plate or even a supercold glass.

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382 EXHIBIT 4 PAGE 8

Caution, handle one vacuum at a time. These vacuums go back for 76 Trillion years. They were the original brainwash thetans did to one another, then psychiatrists (on the whole track) did expertly (modern psychiatrists are punks, modern shock too feeble to do more than restimulate old vacuums).

Take the vacuum that comes up running solids, or even "Recall a can't have", whatever it is and solve it as above.

This is delicate auditing. If you restimulate a vacuum too hard, the whole track groups on it.

Read Book One. Add vacuums instead of word groupers, use above and you'll probably get through to success. Nibs did and I had given him less than you have here. Of course, he's one of the best auditors in the business, so go easy. And Herbie Parkhouse is no slouch.

CAUTIONARY

This is true—

1. We have created the permanent stable clear.
2. In creating him we have a homo novis in the full sense, not just an Operating Thetan.
3. We now know more than life. An oddity indeed!
4. We now know more about psychiatry than psychiatrists. We can brainwash faster than the Russians (20 secs to total amnesia against three years to slightly confused loyalty).
5. We can undo whatever psychiatrists do, even the tougher grade from away back. We can therefore undo a brainwash in 25 to 75 hours.
6. We can create something better than that outlined and promised in Book One.

BUT

1. We need to know more and be more accurate than ever before about the time track and auditing. I have not given a thousandth of what I know about this.
2. We have a new game but also new responsibilities amongst men.
3. This data in the wrong hands before we are fully prepared could raise the Devil Literally.
4. Because we know more than the Insanity Gang, we're not fighting them.
5. Because we can undo what we do, we must retain a fine moral sense, tougher by far than any of the past.
6. We can create better than in Book One now only if we know Book One and know our full subject.

AND WE DO NOT YET KNOW ALL THE SAFETY PRECAUTION TO BE USED.

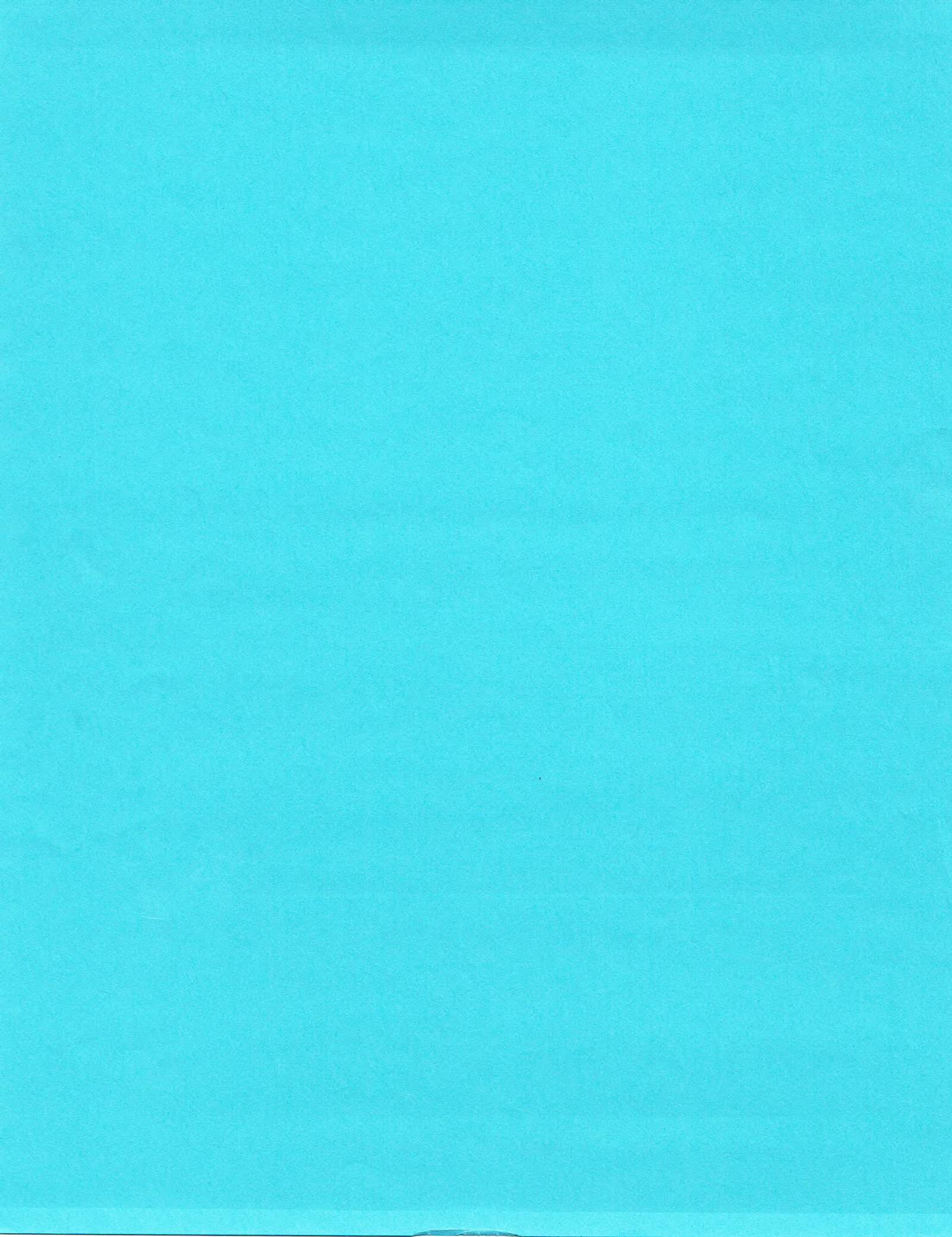
I will be giving this data in full at the Games Congress, Shoreham Hotel, WASHINGTON, D.C., August 31st, to September 3rd, 1956.

The exact regimen of this will be SLP 8 and will include the total picture of separating valences from bodies (which must still be done by the auditor, a formula I now have).

I have given you this data in this bulletin at this time because now I know I know and I want you to share in seeing the surge of vision which will be our future.

L. RON HUBBARD

P.S. (Actually, contrary to rumor, it hasn't all been done before. If it had been, the guy who is saying it has would be clear!)



FILED
JUN 23 1992
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 BY _____ DEPUTY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

RECEIVED

JUL 10 1992

HUB LAW OFFICES

10 VICKI J. AZNARAN and RICHARD)
 11 N. AZNARAN,)
 12 Plaintiff(s),)
 13 v.)
 14 CHURCH OF SCIENTOLOGY, et)
 15 al.,)
 16 Defendant(s).)

CV-88-1786-JMI (Ex)

ORDER RULING ON ALL
 REMAINING PENDING MOTIONS

cc Dr. [unclear]
7-11-92
Ho
cc chert

ENTERED
JUN 25 1992
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 BY _____ DEPUTY

7-10-92
Ho

IT IS HEREBY ORDERED:

The Court having read and considered all pending motions,
 the oppositions thereto, and all supporting documents filed
 therein hereby makes the following rulings:

Defendants CHURCH OF SCIENTOLOGY, et al.'s (hereinafter
 "Defendants") motion for an Order confining Plaintiff's theories
 of recovery as stated in the Joint Status Report is hereby
 DENIED.

1 Defendants' motion to strike the papers filed by Joseph
2 Yanny and request for sanctions is hereby DENIED as MOOT (See
3 this Court's Orders filed July 24, 1991 and August 30, 1991).

4 Defendants' motion for a separate trial of the affirmative
5 defenses of release and waiver is hereby DENIED.

6 Defendants' motion to exclude the testimony of Plaintiff's
7 designated expert Margaret Singer is hereby DENIED.

8 Defendants' motion to dismiss Plaintiffs' Complaint with
9 prejudice is hereby DENIED.

10 Defendants' motion for summary judgment based on the statute
11 of limitations is hereby DENIED.

12 Defendants' motion for summary judgment pursuant to the
13 First Amendment is hereby DENIED.

14 Defendants' motion to seal the prior settlement agreement is
15 hereby DENIED as it was filed after the motion cut-off date set
16 forth in this Court's Orders of August 9, 1991 and August 30,
17 1991.

18 Defendants' motion to dismiss Plaintiffs' claims and for
19 entry of default as to Defendants' counterclaims is hereby
20 DENIED as it was also filed after the motion cut-off date set
21 forth in this Court's Orders of August 9, 1991 and August 30,
22 1991.

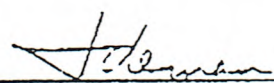
23 Plaintiffs' ex parte application for an Order which vacates
24 and resets the trial date to include a command to David
25 Miscavige to appear at the new trial date ad testificandum is
26 hereby DENIED. The parties are hereby directed to make the
27
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1 necessary arrangements to subpoena their own witnesses.

2 Defendants' Notice of Plaintiffs' Non-Compliance with
3 mandatory pre-trial procedures and requests for sanctions are
4 hereby DENIED as MOOT (See this Court's August 30, 1991 Order).

5 IT IS SO ORDERED.

6
7 DATED: 22 Jun 92

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10 _____
11 JAMES M. IDEMAN
12 United States District Judge
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NAME OF MEDIA ORGANIZATION: CNN (Cable News Network)
 INDIVIDUAL SUBMITTING REQUEST: John McManus
 ADDRESS: 50 California Street, Suite 950
 San Francisco 94111
 TELEPHONE NO.: 415 434 1661

NAME OF COURT: Marin County Superior Court
 STREET ADDRESS: Dept. 4
 MAILING ADDRESS: San Rafael, Calif.
 CITY AND ZIP CODE:
 BRANCH NAME:

NAME OF JUDGE: Judge Michael Dufficy

NAME OF CASE: Scientology vs. Armstrong

REQUEST TO CONDUCT FILM AND ELECTRONIC MEDIA COVERAGE AND ORDER

FOR COURT USE ONLY

FILED

MAR 20 1992

HOWARD HANSON
 MARIN COUNTY CLERK
 by A. Cooper, Deputy

[Signature]

CASE NUMBER
 No. 152229

1. TYPE OF PROCEEDING
- Criminal (specify charges):
- Civil (specify type, e.g., personal injury, domestic relations, etc.):

2. PORTION TO BE COVERED (e.g., bail hearing, preliminary hearing, particular witnesses at trial, sentencing hearing):

3. DATE OF PROPOSED COVERAGE:
 March 20, 1992

4. TYPE OF COVERAGE
- TV camera and recorder Audio
- Still camera Other (specify):
- Motion picture camera

RECEIVED

APR 1 1992

HUB LAW OFFICES

5. SPECIAL REQUESTS OR ANTICIPATED PROBLEMS (specify):

CERTIFICATION

I certify that if consent is granted to conduct film and electronic media coverage in this case, all personnel of this media organization will abide by the provisions of rule 980, California Rules of Court, and any restrictions imposed by the court.

Date: March 20, 1992

John McManus
(TYPE OR PRINT NAME)

[Signature]
 CNN SE Assignment Manager
(SUPERVISORY POSITION IN MEDIA ORGANIZATION)

ORDER

The request to conduct film and electronic media coverage is

granted.

denied.

granted subject to satisfactory pooling arrangements being made.

Date: March 20 1992

[Signature]
(SIGNATURE OF JUDGE)

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: 3/20/92 COURT MET AT 9:05 Am DEPARTMENT NO. 4
 PRESENT: HON. Michael B. Dufficy, JUDGE A Cooper, DEPUTY CLERK
Margaret Cordova, REPORTER Al Wong, BAILIFF

TITLE:
Church of Scientology of International
 vs.
Gerald Armstrong, et al

COUNSEL:
Andrew Wilson
Laurie Bartleson
Graham Berry
Ford Greene

NATURE OF PROCEEDINGS: Motions ACTION NO. 152229

This matter comes before the Court on the following motions:

1. Motion to Dismiss / Stay + Transfer to L.A.
2. Motion to Intervene
3. Application by Mr. Hertzberg to address this Court.
4. Protective Order
5. Motion for Preliminary Injunction
6. Evidentiary Hearing
7. Motion for Sanctions

Appearance as noted above.

The Court hears argument re media filming.

Filming is allowed.

Argument re transferring matter to L.A. (Defense argument)

Argument re preliminary injunction (plaintiff argument)

Mr. Hertzberg addresses the Court re ^{previous} ruling of jurisdiction + venue.

Argument in opposition by Mr. Greene

Mr. Berry presents argument + joins with Mr. Greene (T.R.O.)

Mr. Wilson argues to restrain the defendant re T.R.O.)

Submitted.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF MARIN

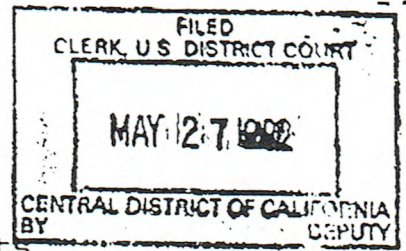
DATE 3/20/92 AT 9:05 AM, Dept. 4 CONTINUE

ABBREVIATED TITLE Church of Scientology vs. Armstrong, et al ACTION NO. 15222

The Court makes the following order,

Change of Venue is granted. The Court will allow the T.R.O. to remain in effect for an additional 45 days to allow all counsel time to file in L.A. County. The remainder of the motions will be presented & argued in L.A. County. Mr. Wilson to prepare order.

1 Jerold Fagelbaum, Esq.
LAW OFFICES OF JEROLD FAGELBAUM
2 2029 Century Park East, Suite 3270
Los Angeles, California 90067
3 Telephone: (310) 286-7684



4 Attorneys for Defendants and Counter-Claimants
DAVID MAYO, AND THE CHURCH OF NEW CIVILIZATION

5
6 Gary M. Bright, Esq.
BRIGHT & POWELL
7 5464 Carpinteria Avenue, Suite E
Carpinteria, California 93013
8 Telephone: (805) 684-8480

9 Attorneys for Defendants and Counter-Claimants
DAVID MAYO, CHURCH OF NEW CIVILIZATION, AND DEFENDANTS
10 JOHN NELSON, HARVEY HABER, VIVIEN ZEGEL AND DEDE REISDORF

11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14

15 RELIGIOUS TECHNOLOGY CENTER, a)
California corporation, et al.,)
16)
Plaintiffs,)

CV 88-711 JMI (Bx)
CV 88-7197 JMI (Bx)

17)
vs.)
18)
ROBIN SCOTT, an individual,)
19 et al.)
20 Defendants.)

DEFENDANTS COUNTER-
CLAIMANTS' ITION TO
PLAINTIFFS COUNTER-
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER RE FIFTH
REQUEST FOR PRODUCTION OF
DOCUMENTS OR THINGS AND FOR
SANCTIONS

21 _____)
RELIGIOUS TECHNOLOGY CENTER, a)
22 California corporation, et al.,)
23)
Plaintiffs,)

24)
vs.)
25)
LARRY WOLLERSHEIM, an)
26 individual, et al.,)
27 Defendants.)

DATE: June 10, 1992
TIME: 5:00 P.M.
CTRM: Hon. James G. Kolts
Special Master,
at the Pasadena
Hilton Hotel

28 AND RELATED COUNTER-CLAIMS)
_____)

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TABLE OF AUTHORITIES

Cases

Bent Carvdon v. Church of Scientology, Inc., et al.,
L.A.S.C. Case No. C604 401 10

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,
402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 785 (1971) 15

Church of Scientology of California v. Armstrong,
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I.

INTRODUCTION

Defendants aand Counter-Claimants David Mayo and the Church of the New Civilization and Defendants Harvey Haber, John Nelson, Vivien Zegel and DeDe Reisdorf submit this Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion For a Protective Order. The focus of Plaintiffs' Motion are two tape recordings admittedly in the possession of Plaintiff CSC which purportedly contain candid discussions concerning the re-organization of the corporate statues of the Church of Scientology, including the Plaintiffs herein. In addition to being relevant to Defendants' defense of the Plaintiffs' complaints (recommended for dismissal by the Special Master) the tapes are directly relevant to Defendants' counterclaims and involve such seminal issues as management and control, conspiracy, alter ego, commingling of assets, malice and intent. Nevertheless, the Plaintiffs act as if they have heard this for the very first time, although, in actuality, they have litigated analogous issues involving their refusal to produce the same tapes in response to other discovery requests for over seven years, all the way to the United States Supreme Court, and lost.

Plaintiffs' Motion raises a simple question -- is there any justifiable reason for the Court to preclude production of non-privileged, non-cumulative, tape recordings directly responsive to Defendants' document request? The simple answer is -- no. Whatsmore, the obstacles Plaintiffs have placed in Defendants' path, depriving them of essential discovery other courts have determined to be produceable is intentionally in bad faith and

1 requires the imposition of substantial sanctions designed to curb
2 Plaintiffs' ongoing, uninterrupted discovery abuse. For all of
3 these reasons, and for those set forth below, Plaintiffs' Motion
4 for a Protective Order should be denied and the two tapes at issue
5 should be ordered produced without further delay.

6 II.

7 STATEMENT OF FACTS
8 RELEVANT TO PENDING MOTION

9 A. The Pending Document Request

10 On March 26, 1992, Defendants and Counter-Claimants served
11 their Fifth Request For Production of Documents and Things on
12 Plaintiffs and Counter-Defendants, and each of them, (hereinafter
13 "the request")¹ requesting in its entirety as follows:

14 "The audio tapes of two meetings of the Mission
15 Corporate Category Sort-out project identified
16 in U.S. v. Zolin, 905 F.2d 1344 (9th Cir.
17 1990), and held admissible under the crime-
18 fraud exception to the attorney-client
19 privilege."

20 On April 28, 1992, Counter-Defendant Church of Scientology of
21 California ("CSC") responded to said request by refusing to
22 produce the designated tapes and instead tendered the following
23 objections:

- 24 - That a discovery cut-off of September 8, 1989 previously
25 imposed by Judge Pfaelzer, had passed;

26
27 1 This document request is actually the sixth request propounded
28 by Defendants and Counter-Claimants and was inadvertently
miscaptioned. All references herein to the "Fifth Request"
pertain exclusively to this request.

- 1 - That the evidence sought was irrelevant (F.R.Civ.P.
2 26(b));
3 - That the request was tendered for an improper purpose
4 (i.e., to harass and delay) (F.R.Civ.P. 26(g)); and
5 - That the request was the result of collusion between
6 Joseph Yanny, the IRS, and Defendants' legal counsel
7 herein.

8 The remaining Counter-Defendants, Religious Technology Center
9 ("RTC"), Church of Scientology International ("CSI"), and Church
10 of Spiritual Technology ("C.O.S.T."), all filed similar
11 objections, although claiming that the tapes were not in their
12 possession, custody or control. Based upon their objections,
13 Plaintiffs and Counter-Defendants, jointly filed this Motion for a
14 Protective Order, pursuant to F.R.Civ.P. 26, and additionally
15 requested sanctions from Counter-Claimants and their legal counsel
16 for propounding allegedly irrelevant discovery and for doing so
17 for an ostensibly improper purpose.

18 **B. The Mission Corporate Category Sort-Out Project**

19 Starting in 1980, various de jure and de facto officials of
20 the Church of Scientology Plaintiffs herein and their predecessor
21 organizations commenced a project known as the Mission Corporate
22 Category Sort-Out (hereinafter "MCCS"). Said project was intended
23 to review the corporate relationships between Church of the
24 Scientology's public corporations (at that time headed by
25 Plaintiff CSC) and L. Ron Hubbard. The purpose of the "mission"
26 was to propose and effectuate changes in the Church Scientology's
27 corporate structure and relationships in order to;

1 (1) shield the fact that Scientology corporations
2 and organizations were centrally controlled and
3 constituted but one legal entity which would be
4 disguised; and

5 (2) establish separate lines of defense to civil
6 lawsuits as well as the ongoing tax
7 investigation of the Internal Revenue Service.

8 Transcript of Proceedings, Church of Scientology of California v.
9 Armstrong, L.A.S.C. Case No. 420153, Testimony of Laurel Sullivan,
10 page 3023 line 20, to page 3026, line 2, page 3055, line 20, to
11 3056 line 18. (All transcript references to the Armstrong trial
12 are attached hereto as Exhibit "A").

13 Laurel Sullivan, a key team member of this project,
14 subsequently testified under oath in proceedings before the Hon.
15 Paul Breckenridge, Jr., Judge of Los Angeles Superior Court, that
16 the purpose of the MCCS project was:

17 "To sort out the problems that were in relation
18 to L. Ron Hubbard and the Church, the
19 corporate integrity of corporations, L. Ron
20 Hubbard, the issue of the alter ego phenomenon,
21 L. Ron Hubbard in relation to the Church of
22 Scientology of California."

23 Deposition of Laurel Sullivan in the Armstrong case at pages 183-
24 184. (Emphasis added.)²

25
26 2 To prevent such adverse testimony in the future, Laurel
27 Sullivan (who at the time was involved in litigation against the
28 Church of Scientology) was offered a "settlement" on the express
written condition she not make herself available for testimony in
any proceedings adverse to the Church of Scientology. As a result,
Ms. Sullivan's availability in these proceedings has been
deliberately obstructed by the Plaintiffs herein.

1 As a direct result of the MCCS project, a major "revision" of
2 the Church of Scientology's corporate structure was publicly
3 announced by a ranking Scientology spokesman, Lyman Spurlock,
4 during a October 17, 1982 meeting of Scientology mission-holders
5 (local Scientology churches). During that meeting Mr. Spurlock,
6 then introduced as "Corporate Affairs Director" (and subsequently
7 named a President of Counter-Defendant C.O.S.T.), described the
8 then existing Scientology enterprise:

9 "Prior to the end of 1981 a few of us got
10 together and took a look at the corporate
11 structure of the Church with the view in mind
12 of making it more defensible and more regular,
13 and to make an overall improvement. Here's how
14 it looked roughly before the end of 1981. We
15 had this one huge corporation known as Church
16 of Scientology of California, CSC."

17 (Exhibit "C" at ¶ 4). (Emphasis added.)

18 Spurlock continued to describe how in 1981, pursuant to the
19 MCCS project, Spurlock and "others" proceeded to take CSC apart
20 and create therefrom a trilogy of new corporations:

21 "So, in late 1981 we took a look at this and
22 said, this can't go on; it's not very
23 defensible, it doesn't make sense. Let's line
24 it up as the Church hierarchy is lined up. So
25 what we did is we split up C of S of C and we
26 reorganized WW, (the world-wide Scientology
27 network) in the following manner."
28

1 (Exhibit "C" at pages 5-6 and Chart 2.) (Parenthetical and
2 emphasis added.)

3 During this public speech, Spurlock continued to explain how
4 many of the functions of the former CSC were then transferred,
5 including the creating of a new 'Mother Church' in the form of
6 Church of Scientology International, and that control of
7 Scientology's technical materials was granted to another new
8 corporation, the Religious Technology Center.

9 Significantly, the two newly created corporations RTC and CSI
10 together with the revised CSC, (publicly and admittedly organized
11 and re-organized by Lyman Spurlock and "others" pursuant to the
12 MCCS project), are the same three Scientology entities which
13 initiated this litigation in 1985 and constitute three of the four
14 Counter-Defendants herein.

15 C. The MCCS Tapes

16 In 1980, two meetings of MCCS participants and certain
17 attorneys participating in the project were tape recorded by
18 representatives of the Church of Scientology. These recordings
19 subsequently were filed as exhibits in a state civil case
20 captioned Church of Scientology of California v. Gerald Armstrong,
21 L.A.S.C. Case No. 420153. Later, as a result of this filing, the
22 tapes became the subject of an I.R.S. subpoena in connection with
23 a on-going criminal investigation of the Church of Scientology.

24 In the litigation between the I.R.S. and the Church of
25 Scientology surrounding the MCCS tapes, the principal issue was
26 whether the conversations on the tapes were subject to the crime-
27 fraud exception to the attorney-client privilege asserted by the
28 Church of Scientology.

1 a. The MCCS Tapes Are Subject To The Crime-Fraud
2 Exception To Attorney-Client Privilege

3 Using a partial transcript of the tapes prepared by the
4 Defendant in the Armstrong case, the I.R.S. sought to have the
5 privilege declared inapplicable. Extensive appeals by the Church
6 of Scientology ensued and, in 1988, the United States Supreme
7 Court remanded the matter to the Ninth Circuit Court of Appeals
8 providing guidelines as to how the crime-fraud exception to the
9 attorney-client privilege was to be established as to the tapes.

10 Pursuant to the Supreme Court remand, the Ninth Circuit
11 examined the partial transcripts of the tapes from the Armstrong
12 litigation and concluded the tapes were subject to the crime-fraud
13 exception. The basis for the Ninth Circuit holding was that
14 statements on the tapes indicated the MCCS project was intended to
15 cover-up past fraud and to perpetrate future frauds as to the
16 actual legal relationships among the Scientology corporations.
17 United States v. Zolin, 809 F.2d 1411, (9th Cir. 1987) aff'd in
18 part and vacated in part, 491 U.S. 554, 109 S.Ct. 2619 (1989), 905
19 F.2d 1344 (9th Cir 1990) (on remand) (hereinafter "Zolin"). As
20 the Ninth Circuit held:

21 "The partial transcripts demonstrate that the
22 purpose of the MCCS project was to cover up
23 past criminal wrong-doing. The MCCS project
24 involved the discussion and planning for future
25 frauds. (citations omitted). The figures
26 involved in MCCS admit on the tapes that they
27 are attempting to confuse and defraud the U.S.
28 Government. The purpose of the crime-fraud
exception is to exclude such transactions from

1 the protection of the attorney-client
2 privilege.

3 We therefore reject the district court's
4 holding that the Government did not make out a
5 showing of intended illegality."

6 Zolin, supra, 905 F.2d 1345-1346. As a result, the tapes (then on
7 deposit with the Court) became subject to discovery. To that end,
8 both the I.R.S. and private litigants subsequently sought, and
9 obtained, access to the tapes.

10 b. The Recent Granting of Plaintiff
11 CSC's Petition For Certiorari

12 On March 3, 1992, in the most recent round of appellate
13 actions in Zolin, a petition for certiorari filed by plaintiff CSC
14 was granted by the Supreme Court. The sole issue on certiorari
15 involves the I.R.S.'s right to possession of the MCCS tapes in
16 furtherance of an on-going investigation as to the tax exempt
17 status of CSI, CSC and RTC.³

18 Most importantly as to the determination of Plaintiffs'
19 pending motion in this case, the Supreme Court is not reviewing
20 Zolin, supra, as to the Ninth Circuit's decision upholding the
21 crime-fraud exception to the attorney/client privilege concerning
22 the tapes, nor is the court deciding whether the MCCS tapes are

23 3 The Supreme Court is to determine whether the United States
24 Court of Appeals for the Ninth District had erroneously issued an
25 order dismissing CSC's appeal as moot because the subject of the
26 appeal, the MCCS tapes, were already released to the I.R.S. by a
27 disinterested third party. That order, dated September 10, 1991,
28 of the Ninth Circuit Court of Appeal held "because it is
undisputed that the tapes have been turned over to the IRS in
compliance with the summons enforcement order, no controversy
exists presently and this appeal is moot". See United States of
America v. Frank Zolin and Church of Scientology, No. 91-55506,
D.C. No. CV-85-0440-HLH, (Central California), September 10, 1991.
(Exhibit " - ")

1 discoverable in other pending civil actions, (such as this one)
2 against the Church of Scientology. Accordingly, Plaintiffs cannot
3 hide behind their pending Supreme Court petition for writ of
4 certiorari.

5 c. The Release Of The MCCS Tapes In
6 Other Private Litigation Involving
7 Plaintiffs

8 In addition to the I.R.S., counsel for Plaintiffs in a case
9 encaptioned Bent Corydon v. Church of Scientology, Inc., et al.,
10 L.A.S.C. Case No. C 604 401 sought by way of discovery to obtain a
11 copy of the MCCS tapes for use in that litigation. The Plaintiffs
12 there, like the Defendants herein, argued that the MCCS tapes were
13 relevant to such issues as alter-ego and lack of corporate
14 integrity among the Scientology corporate entities.

15 On January 25, 1991, the Honorable Thomas T. Johnson, Superior
16 Court Judge, Retired, named by the Court as a Referee, ordered the
17 Scientology Defendants in that case (including Church of
18 Scientology of California and Church of Scientology International)
19 to permit Plaintiff Corydon access to the tapes:

20 "In view of the Ninth Circuit holding, as to
21 the tapes presently under seal, plaintiff have
22 a right to access thereto. Defendants are not
23 to oppose effort to obtain access."

24 (Referee's Report, January 25, 1991, at 2). Thereafter, on March
25 26, 1991, the Referee's Report was signed, filed and adopted by
26 the Court, the Honorable Richard C, Hubbell. As a result,
27 Plaintiff Corydon was then able to obtain a copy of the MCCS tapes
28 directly from the Court.

1 Given the judicially acknowledged overwhelming relevance and
2 probative value of the MCCS tapes to issues common the the Corydon
3 case and this litigation, Plaintiffs' contrived arguments against
4 production in this case, previously rejected in other cases, must
5 fail.

6 III.

7 PLAINTIFFS' MOTION FOR PROTECTIVE
8 ORDER SHOULD BE DENIED AND DEFENDANTS'
9 FIFTH DOCUMENT REQUEST SHOULD BE GRANTED

10 A. The Document Request is Consistent With F.R.Civ.P. 26(b)
11 Requiring That Discovery Be "Relevant To The Subject
12 Matter Involved In The Pending Action"

13 1. Relevance To Issues Pending In This Case

14 Plaintiff and Counter-Defendant CSC admits it possesses a copy
15 of the MCCS tapes responsive to Defendants' Fifth Request For
16 Documents and Things, but contends, at least initially, that the
17 tapes are irrelevant. Contrary to Plaintiffs' self-styled
18 conclusion of irrelevance as to the requested discovery, the
19 probative value of Plaintiffs corporate structure to issues in the
20 case is readily demonstrable.⁴

21 The Counter-Claims herein allege, inter alia, a conspiracy
22 among Counter-Defendants and others to violate the Lanham Act,
23 engage in unfair competition, maliciously libel, and intentionally

24 4 Perhaps of all the conceivable objections raised by a party to
25 discovery, lack of relevance is the least persuasive and should be
26 given little, if any, weight. Geophysical Systems Corp. v.
27 Raytheon Co., Inc., 117 F.R.D. 646 (D.C. Cal. 1987) (Defendants'
28 statement under oath that no responsive documents exist was not
determinative of discovery request); see also, Mercer v. Allegheny
Ludlum Corp., 125 F.R.D. 43 (S.D.N.Y. 1989) ("Plaintiffs are not,
in our judgment, required to accept the disclaimer of non-
relevance from Goldman Sacks or its counsel in respect to
documents which to date they have not been permitted to inspect")

1 inflict of emotional distress upon Counter-Claimants. Relevant to
2 all these cause actions are issues relating to alter ego,
3 conspiracy, intent, commingling of assets, and management and
4 control. The documents tapes are directly relevant to, or may
5 lead to the discovery of, further admissible evidence regarding,
6 all of these issues.

7 a. Management And Control, Corporate
8 Structure

9 The tapes requested by Defendants reflect the genesis of how
10 corporate Plaintiffs and Counter-Defendants herein became to be
11 managed and controlled. Despite the facade of corporate
12 separateness, said Plaintiffs and Counter-Defendants ignore
13 corporate separateness and routinely share both personnel and
14 financial resources to advance their objectives. See,
15 Electromatic (PTY) Ltd. v. Rad-O-Lite of Philadelphia, Inc., 90
16 F.R.D. 182 (D.Pa. 1981) (Allegations that corporate defendants not
17 operated as independent entities sufficient to support discovery
18 of financial and other transactions among various corporate
19 defendants).

20 Defendants have further alleged, and evidence such as the MCCS
21 tapes will support, that the Plaintiffs and Counter-Defendants
22 (including C.O.S.T.), although each separately incorporated are,
23 in fact, managed and controlled by the same nucleus of
24 individuals. Plaintiffs and Counter-Defendants continue to
25 dispute this, yet consistently refuse to produce even the most
26 basic and obvious documentation probative of this issue.
27 Unprivileged tapes of how the corporate Plaintiffs herein were
28 initially formed and organized (no matter how modified in the
future) are highly probative and direct evidence of this issue.

1 Simply put, the requested tapes would reveal how Plaintiffs' and
2 Counter-Defendants corporate structure was, and still is, actually
3 managed and controlled by one small powerful group which oversees
4 and controls all the functions of the "Church of Scientology",
5 including (RTC, CSI, CSC and C.O.S.T.). Plaintiffs cannot hide
6 this evidence simply based on Plaintiffs' own assertions the
7 evidence on the tapes is not relevant to the very issues Mr.
8 Spurlock indicated the MCCS tapes address.

9 b. Joint And Several Liability, Alter
10 Ego, Piercing The Corporate Veil

11 Up to shortly before his death in June, 1986, L. Ron Hubbard
12 exercised de facto control over the Church of Scientology by such
13 mechanisms as the Sea Org and Commodore's Messenger Organization.
14 Since Hubbard's death, that power has been asserted at various
15 times by such individuals as David Miscavige, Lyman Spurlock,
16 Norman Starkey and Pat and Annie Broeker. In rooting out the true
17 facts, it is essential to identify the key individuals who on a de
18 facto basis actually participated in the formation of the
19 corporate entities who brought these consolidated actions, and are
20 alleged by Counter-Claimants to have controlled such corporations
21 at all times relevant to the events surrounding the Plaintiffs'
22 deliberate retributive campaign directed against David Mayo and
23 the Church of the New Civilization. In order to assess legal
24 responsibility (e.g., joint and several liability) for the acts
25 and conduct forming the basis of Defendants' counter-claims, it is
26 essential that the Court and trier of fact understand how the
27 Church of Scientology is organized and governed.

28 Former President of Plaintiff RTC, Vicki Aznaran, has
testified that the entire Scientology corporate structure was

1 designed to shield those in power from personal liability, and
2 avoid tax and civil judgments. Accordingly, a detail of the
3 intended corporate structure as discussed on the MCCS tapes is
4 absolutely essential to the Counter-Claims allegations that each
5 of the corporate Counter-Defendants is legally responsible for the
6 actions of the orders. Independent Investor Protective League v.
7 Touche Ross, 607 F.2d 530 (2d Cir.), cert. denied, 439 U.S. 895,
8 58 L.Ed.2d. 241, 99 S.Ct. 254 (1978) (Rule 37 sanctions imposed
9 for failure to produce information regarding Plaintiffs'
10 organization in response to discovery request).

11 B. There Is Good Cause For An Order To Produce The MCCS
12 Tapes

13 The statements of Ms. Sullivan and of Mr. Spurlock himself
14 demonstrate that the MCCS project was directly related to the
15 Scientology Counter-Defendants herein. In addition, the
16 statements of Lyman Spurlock clearly demonstrate that subsequent
17 to the MCCS project various changes were made regarding corporate
18 structure. Based on these statements it is obvious that the MCCS
19 documents are likely to lead to, and comprise, admissible
20 evidence.

21 Moreover, the MCCS tapes are unique. Participants to the
22 meeting are solely under the control of Plaintiffs and others,
23 such as Laurel Sullivan, who have first hand knowledge have been
24 neutralized by Plaintiffs' non-cooperation clauses contained in
25 settlement agreements. Accordingly, the MCCS tapes provide a rare
26 look inside fortress Scientology where the participants knowingly
27 hatched a conspiracy to defraud potential claimants including the
28 United States Government and private litigants.

1 C. Plaintiffs Are Estopped From Reasserting Previously
2 Litigated Issues As Plaintiffs And Counter-Defendants Had
3 A "Full And Fair" Opportunity to Litigate Their Claims In
4 The Corydon Lawsuit

5 The doctrine of collateral estoppel, like the related doctrine
6 of res judicata, seeks to protect litigants from the burden of
7 relitigating an identical issue with the same party or his privy
8 and thereby promote judicial economy. Blonder-Tongue
9 Laboratories, Inc. v. University of Illinois Foundation, 402 U.S.
10 313, 328-329, 91 S.Ct. 1434, 1442-1443, 28 L.Ed.2d 785 (1971).

11 Consistent with these purposes, the United States Supreme
12 Court in Parklane Hosiery Co. v. Shore, (1979) 439 U.S. 322, 58
13 L.Ed.2d 552, 99 S.Ct. 645 (1979), abolished the mutuality
14 requirement, (i.e., a party could not use a prior judgment or
15 issue determination as an estoppel against an adverse party unless
16 both parties were bound thereby), and further held a plaintiff may
17 "offensively" use the doctrine of collateral estoppel to foreclose
18 a defendant from re-litigation of issues previously resolved
19 against the defendant in an action with another party. The
20 Supreme Court provided for a flexible approach in determining the
21 application of the collateral estoppel doctrine:

22 "We have concluded that the preferable approach
23 for dealing with these problems in the Federal
24 Courts is not to preclude the use of offensive
25 collateral estoppel, but to grant trial courts
26 broad discretion to determine when it should
27 apply."

28 Parklane Hosiery, supra, 439 U.S. at 331, 99 S.Ct. at 651.

Thus, the primary criteria as to the application of the
doctrine in that the party against whom issue preclusion is sought

1 had a full and fair opportunity to litigate the issue in the
2 previous action.

3 In Corydon v. Church of Scientology International, supra,
4 plaintiff Bent Corydon similarly moved to compel production of
5 the MCCS tapes as to the defendants therein (Plaintiffs and
6 Counter-Defendants in this case). The MCCS tapes requested in the
7 Corydon lawsuit were requested under almost identical
8 circumstances to this pending case as the the tapes were relevant
9 to show actual management and control of the corporate structure
10 of the Church of Scientology and its corporate entities.
11 Nevertheless, as in the instant litigation, CSI, and CSC objected
12 to the request. The court, granted plaintiff's order compelling
13 the production of the tapes.

14 Plaintiffs and Counter-Defendants had a "full and fair"
15 opportunity to litigate the discoverability of the MCCS tapes in
16 the Corydon case because the plaintiff's motion to compel was
17 fully briefed, hearings were held, and the issue fairly determined
18 on the merits. In addition, Plaintiffs' and Counter-Defendants'
19 interest in not disclosing the MCCS tapes in the Corydon
20 litigation is identical to their interest in preventing disclosure
21 herein, to prevent potential liability as to an adverse civil
22 judgment. As they had every incentive to litigate those issues
23 fully in the Corydon lawsuit, and have been afforded their day in
24 court thereon, Plaintiffs should now be estopped from re-
25 litigating the identical issue herein.

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IV.

DEFENDANTS AND COUNTER-CLAIMANTS' FIFTH
DOCUMENT REQUEST WAS DONE FOR A PROPER
PURPOSE AND SANCTIONS SHOULD NOT BE
IMPOSED UNDER FED.R.CIV.P. 26(G)

Rule 26(g) of the Federal Rules of Civil Procedure provides that a signature of an attorney or party on a discovery request constitutes a certification that the signor has read the request . . . and that to the best of the signor's knowledge, information, and belief, formed after a reasonable inquiry is: (1) consistent with these rules and warranted by existing law . . . (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay . . . and (3) not unreasonable . . .

A. Reasonable Inquiry Was Made By Defendants And Counter-Claimants

1. Plaintiffs and Counter-Defendants Claim That Request Of The Tapes Are Irrelevant And Done Only To Harass Is Unfounded

Plaintiffs and Counter-Defendants cite Rosin v. New York Stock Exchange, 484 F.2d 179 (9th Cir.), cert. denied, 415 U.S. 977, 94 S. Ct 1564 (1973); O'Brien v. Equitable Life Assurance Society, 14 F.R.D. 141 (D.Mo. 1953); and New Sanitary Towel Supply, Inc., v. Consolidated Laundries Corporation, 24 F.R.D. 186 (S.D.N.Y. 1959) for the proposition that where discovery is irrelevant to any issue in the litigation, or where the sole purpose of discovery is to harass a litigant, the court should grant a protective order seeking to prohibit discovery.

However, in Rosin, the court did not say that discovery was irrelevant, nor did it issue a protective order against discovery. The court in Rosin held that where a memorandum opinion and order

1 opinion and order are issued dismissing an action, further
2 discovery will not be allowed.

3 In O'Brien, depositions were deemed unnecessary to document
4 activities after the trial had begun in a case involving a prior
5 refusal to pay benefits under an insurance policy. The facts in
6 O'Brien are substantially different from the facts at bar where
7 tapes are requested which show the corporate structure, management
8 and control of Counter-Defendants corporations.

9 Similarly, in New Sanitary Supply, Inc., supra, the
10 duplicitative recross-examination of an already thoroughly
11 examined witness which was ruled to serve no other purpose than to
12 harass and oppress litigants is demonstrably distinguishable from
13 this case which involves the proper initial request for relevant,
14 non-cumulative evidence directly related to Plaintiffs' and
15 Counter-Defendants' liability.

16 2. Discovery Cut-Off

17 On May 8, 1989, Judge Pfaelzer set a trial date premised upon
18 Defendants having up until September 8, 1989 to conduct discovery.
19 Defendants pursued both documentary and deposition discovery in
20 the Summer of 1989 until such time as Plaintiffs' refused to
21 comply with document requests and filed a series of motions for
22 protective orders effectively blocking all pending depositions.
23 Accordingly, Defendants filed a series of discovery motions
24 designed to compel Plaintiffs to produce documents necessary to
25 conduct depositions of Plaintiffs and Counter-Defendants.
26 Although all of the discovery motions were granted, Plaintiffs
27 refused to comply, resulting in the recommended dismissal of their
28 complaints. The Plaintiffs' current Motion for a Protective Order

1 perpetuates Plaintiffs' discovery obstructionism and interferes
2 with Defendants' ability to proceed with their counter-claims.

3 As the Special Master recently noted when dismissing
4 Plaintiffs' complaints:

5 "Sadly, the case remains dead-locked in
6 discovery matters. It is nowhere near ready to
7 proceed to trial."

8 (Order, 4/17/92).

9 Under the circumstances, when one party is prevented from
10 completing its discovery as a direct result of its adversary's
11 discovery recalcitrance it cannot be prejudiced by an arbitrary
12 imposition of a discovery cut-off. The District Court implicitly
13 recognized this when he authorized the Special Master to:

14 "make recommendations as to whether further
15 discovery should be permitted as well as the
16 scope and duration of discovery."

17 (Referral Order, 9/12/89).

18 Moreover, Defendants and Counter-Claimants have indicated from
19 the very first hearing before the Special Master that the
20 resumption of their discovery was their primary focus in filing
21 six motions to compel as well as oppositions to all of Plaintiffs'
22 Motion for Protective Orders. For Plaintiffs now to argue that
23 discovery is over after the parties have spend the last 2 1/2
24 years litigating over discovery is patently frivolous.

25 **3. Alleged I.R.S. Collusion With Defendants**

26 The Ninth Circuit Court of Appeals has previously held that
27 the MCCS tapes are subject to the crime-fraud exception of the
28 attorney-client privilege and thus even Plaintiffs (in both their

1 objections to the Fifth Request For Documents and Things, and in
2 their pending motion for protective order) do not raise the
3 attorney-client privilege as an objection.

4 Instead, Plaintiffs' contend that, "When the Supreme Court
5 remands the case to the Ninth Circuit to reinstate the appeal, a
6 likely outcome is that the IRS will be ordered to return the MCCS
7 tapes to CSC." Plaintiffs' therefore argue that the "answer to
8 the IRS's dilemma", is to have "private litigants or their
9 attorneys (Defendants) request the documents in document requests
10 in that civil litigation." However, Plaintiffs, who can no longer
11 hide under the cloak of the attorney-client privilege, apparently
12 are now trying to obfuscate legitimate discovery by alleging
13 "collusion" between IRS agents and Defendants. Nevertheless,
14 there is not now, and neither has there ever been, any such
15 collusion. Plaintiffs have let their imagination run wild, while
16 tethering their common sense. (See Declarations of Defendants'
17 counsel submitted in Opposition to Plaintiffs' Motion to Dismiss).

18 B. Sanctions Should Not Be Imposed Against Defendants

19 Plaintiffs and Counter-Defendants reference Insurance Benefit
20 Administrations, Inc. v. Martin, 971 F.2d 1354 (9th Cir. 1984)
21 (Sanctions imposed against counsel for improperly certifying
22 pleadings); and Micro Motion, Incorporated v. Kane Steel Co.,
23 Inc., 894 F.2d 1318 (Fed.Cir.1990) (Plaintiff was denied discovery
24 request seeking disclosure of a non-party's confidential business
25 information) for the proposition that sanctions should be imposed
26 against Defendants and Counter-Claimants under Fed.R.Civ.P. 26(g)
27 requiring that the party or his attorney seeking discovery must

1 "certify" that he has made a "reasonable inquiry" that the request
2 is warranted).

3 However, in Micro Motion Incorporated, the court did not
4 impose any sanctions against plaintiff, but denied Plaintiffs'
5 discovery request simply because it saw a possibility for an abuse
6 of discovery of disclosing private business information from
7 competing non-parties. That case has no relevance to this case.

8 Similarly, in Insurance Benefit Administrators, Inc.,
9 defendants' attorney certified amended pleadings that contained
10 factual mistakes of crucial issues in the case. The court imposed
11 sanctions pursuant to Rules 11, 26(g) and 37 of the Federal Rules
12 of Civil Procedure and 28 U.S.C. § 1927. Again this is not
13 relevant to the circumstances involved in this case.

14 In no way do these cases relate factually to the pending case
15 which involves the proper certification of a discovery request for
16 the MCCS tapes which are non-privileged and clearly relevant to
17 Defendants and Counter-Claimants.

18 Accordingly, Plaintiffs request for sanctions must be denied.
19 By contrast, however, because Plaintiffs' Motion for a Protective
20 Order should be denied, sanctions should be imposed against
21 Plaintiffs, pursuant to Rule 26(c), for filing an ill-conceived
22 motion for a protective order.

23

v.

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CONCLUSION

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For all the reasons set forth above, Plaintiffs' Motion for a
Protective Order should be denied. The issues raised by
Plaintiffs have been conclusively decided against them by the
United States Supreme Court, the Ninth Circuit Court of Appeals

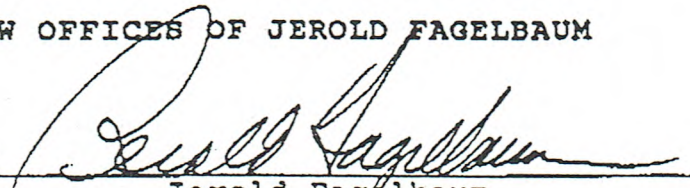
1 and the Los Angeles County Superior Court. The present Motion
2 offers nothing new, but rather, lamely contends the tapes are
3 irrelevant and sought for an improper purpose. Neither is the
4 case. The tapes are relevant and essential evidence and
5 Plaintiffs have come forward with no legitimate reason to support
6 this Court issuing an order blocking Defendants' access to them.

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Respectfully submitted,

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